

EXHIBIT "C"

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DIRECT GENERAL INSURANCE	:	CIVIL ACTION FILE NO
COMPANY,	:	1:23-CV-03491-ELR
	:	
Plaintiff	:	
	:	
Vs	:	
	:	
CHRISTOPHER EVANS and	:	
POLINA DENISSOVA, et al,	:	
	:	
Defendants	:	

VIDEOTAPED DEPOSITION OF DAX LOPEZ,
ESQUIRE, taken at a remote location via Zoom
videoconferencing on July 25, 2024, commencing at
10:03 a.m. before Tracey L. Alexander, a Notary Public
and Certified Shorthand Reporter.

- - -

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23 ALSO PRESENT:

24 MIGUEL BANUELOS,
25 Videographer

1 INDEX TO WITNESSES

2

WITNESS

3

DAX LOPEZ

4

5

6

DIRECT EXAMINATION

PAGE

7

By Ms. Cronan

8

8

9

CROSS-EXAMINATION

10

By Mr. Parker

(none)

11

By Mr. Dolder

(none)

12

By Mr. Hagen

(none)

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16

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18

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1 INDEX TO EXHIBITS

2

PLAINTIFF'S

3 EXHIBIT	DESCRIPTION	PAGE
4 Exhibit 1	Subpoena	20/25
5 Exhibit 2	Expert Report	55/11
6 Exhibit 3	Handwritten Notes	60/9
7	(Retained by counsel)	

8

9 DEFENDANT'S

EXHIBIT	DESCRIPTION	PAGE
10	(No marked exhibits)	

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 DEPOSITION SUPPORT INDEX

2

3 Direction to Witness Not To Answer

4 Page Line Page Line

5 (None)

6

7

8

9 Request for Production of Documents

10 Page Line

11 (None)

12

13

14

15 Stipulations

16 Page Line Page Line

17 6

18

19

20

21

22 Questions Marked

23 Page Line Page Line

24 (none)

25

1 S T I P U L A T I O N S

2 IT IS HEREBY STIPULATED AND AGREED
3 UPON by and between attorneys for the
4 respective parties hereto, that the
5 reading, signing and sealing of the
6 deposition is reserved, and that all
7 objections except as to the form of the
8 question are reserved until the time of
9 trial.

10 IT IS HEREBY STIPULATED AND AGREED
11 UPON by and between the attorneys for the
12 respective parties hereto, that this
13 deposition may be sworn to by the witness
14 being examined before a Notary Public
15 other than the Notary Public before whom
16 this examination was begun.

17 IT IS HEREBY STIPULATED AND AGREED
18 UPON by and between the attorneys for all
19 parties that pursuant to CPLR Section 3113
20 (d) this deposition is to be conducted by
21 video conference, that the court reporter,
22 the witness, videographer, and counsel
23 are all in separate remote locations and
24 participating via video conference.

25 * * *

1 (This is the deposition of
2 DAX LOPEZ, being taken via Zoom
3 videoconferencing. The identity of the
4 witness has been confirmed by the hiring
5 attorney.

6 Today is July 25, 2024. The
7 time on the record is 10:03 A.M. The
8 reading, signing, and sealing of the
9 deposition transcript is reserved.)

10 VIDEOGRAPHER: We are now on the
11 record. This begins video number 1 in the
12 deposition of Dax Lopez, Esquire, in the
13 matter of Direct General Insurance Company
14 versus Estate et al in the United States
15 District Court Northern District of
16 Georgia.

17 Today is July 25, 2024. The time
18 is 10:03 a.m. This deposition is being
19 taken virtually at the request of Hinshaw
20 & Culbertson, LLP. The videographer is
21 Miguel Banuelos with Magna Legal Services.
22 The court reporter is Tracey Alexander of
23 Magna Legal Services.

24 Will counsel and all parties
25 present state their appearances and whom

1 they represent?

2 MS. CRONAN: Good morning.

3 Candace Cronan on behalf of Direct General
4 Insurance Company.

5 MR. DOLDER: Rick Dolder present
6 for Max Hirsch.

7 MR. PARKER: Bill Parker for the
8 Defendant, Christopher Evans.

9 VIDEOGRAPHER: Will the court
10 reporter now swear in the witness?

11 DAX LOPEZ, after having first
12 been duly sworn, was examined and
13 testified as follows:

14 - - -

15 DIRECT EXAMINATION

16 - - -

17 BY MS. CRONAN:

18 Q. Good morning, Mr. Lopez. Would you please
19 state your full name for the record?

20 A. Yes, Dax Eric Lopez.

21 Q. And have you ever had your deposition taken
22 before?

23 A. I have not. This will be a first.

24 Q. Okay. Are you a practicing attorney?

25 A. I am.

1 Q. Okay. So, um, I -- I assume that you're
2 probably familiar with some of the deposition rules,
3 but I'm just going to go over them briefly with you.

4 Uh, you are here today. Uh, you are
5 under oath. The court reporter is going to be taking
6 down everything you say, um, and even though there is
7 a videographer present, we do need you to, of course,
8 uh, articulate your answers clearly, um, and no head
9 nods, um, all that, which I'm sure you are very
10 familiar with as an attorney, correct?

11 A. I am.

12 Q. And all I ask is that if I'm asking you a
13 question, uh, if you need a break, just please, uh,
14 answer the question before we take a break, but I'm
15 happy to take a break at any time if you need a break
16 throughout, uh, the deposition today.

17 A. Great.

18 Q. Excellent. Have you ever served as a witness
19 at a trial or a court hearing?

20 A. I have.

21 Q. In what capacity?

22 A. Uh, a couple of years ago I finished trying a
23 case in DeKalb County, and during the second portion,
24 phase 2 of the trial, which is the attorneys fees
25 portion, I was on the stand to essentially, uh, give

1 the jurors, um, information about the attorneys fees
2 that we were seeking.

3 So, I was under oath on the stand,
4 uh, giving testimony about our attorneys fees in that
5 case.

6 Q. Okay. And do you recall the name of that
7 case?

8 A. I do. It's Nicholas Carisello(phonetic) et
9 al versus, um -- it's called Marr, M-A-R-R, so
10 Metropolitan Atlanta Residential Recovery. It's a
11 malpractice case.

12 Q. Okay. And was that, uh, a legal malpractice
13 case?

14 A. Medical.

15 Q. Okay. Thank you. Do you recall
16 approximately the month and year you gave that
17 testimony?

18 A. It would have been late August of 2022.

19 Q. Now other than that, um, fee hearing, it
20 sounds like it was a fee hearing, correct?

21 A. Well, it was part of a trial, so the jurors
22 decided. So, yes, a portion of it. I tried the case
23 with my co-counsel, and then we had to put up our
24 evidence on attorneys fees in the second phase.

25 Q. Okay. Other than that have you ever served

1 as a witness at a trial or a court hearing?

2 A. No.

3 Q. Have you ever been a Plaintiff or a Defendant
4 in any litigation?

5 A. Yes, um, about twenty-two years ago, I would
6 say. Um, I was a federal law clerk in Puerto Rico, so
7 I clerked for a federal judge, and during my time
8 there I had an unpleasant experience at a Chinese
9 restaurant, um, that resulted in me having to sue
10 them, the Chinese restaurant.

11 I ingested something no one should
12 have to ingest that was not food, and, uh, we filed a
13 -- a friend of mine filed a lawsuit for me. It was
14 ongoing for about three to four months, and we settled
15 for some nominal amount.

16 Q. Did you ever return to that restaurant?

17 A. Uh, no. I did not.

18 Q. Other than that, uh, matter, uh, have you
19 ever been a Plaintiff or a Defendant in any
20 litigation?

21 A. No.

22 Q. Have you ever filed any, uh, agency claims,
23 uh, any governmental agency seeking relief?

24 A. No.

25 Q. Okay.

1 A. Not on my personal behalf. Obviously on
2 behalf of my clients, yes, but in my personal
3 capacity, no.

4 Q. Okay. Have you ever participated in
5 arbitration as a party or a witness?

6 A. No.

7 Q. Okay. Are you represented by counsel for
8 purposes of the deposition today?

9 A. Mr. Dolder is present, uh, and I suspect
10 he'll be making some objections, but I am the expert
11 witness that he has retained.

12 Q. Okay. Uh, but you're not -- you don't have
13 any personal counsel with you today, correct?

14 A. I do not.

15 Q. Okay. And what did you do to prepare for the
16 deposition today?

17 A. So, I -- Mr. Dolder provided a box full of
18 documents, uh, several binders, um, including the
19 pleadings in this matter, uh, some depositions in this
20 matter, uh, it also had a lot of the exhibits that are
21 at issue, the sum of demands, the response, the
22 responses. I think I have the claims files from
23 discovery in this case.

24 So, I reviewed -- I'll say I didn't
25 review every document that he provided but I did

1 review the documents that lead to my opinion about the
2 demand at issue and the response from Direct General.

3 So, I focused most of my attention, uh, on the
4 documents that are related to those two things.

5 Q. Okay. So, you focused your attention on the
6 documents that are listed that you relied on in your
7 report, correct?

8 A. So, I know you received the list. I didn't
9 review every single document there, but I was provided
10 a copy of those, but I did peruse a lot of the
11 binders. I did review a couple of the depositions,
12 um, specifically Matt Hagen's deposition and Michael
13 St. Amand's deposition, I think were the two that I
14 reviewed, um, but, yeah, I spent some time with Mr.
15 Dolder, um, on two occasions discussing and preparing
16 for today.

17 Q. Okay. And tell me a little bit more about
18 the binders that you're referring to. Do you have
19 them with you right now?

20 A. I have two of the binders. Um, so this
21 binder here has pleadings, uh, in this matter, or some
22 of the pleadings, I'm sure it's not all of them. Um,
23 I reviewed some of those.

24 It also includes the September 6th
25 letter from Mr. Amand. It has the verdicts. It has

1 the judgements. It has Mr. Hirsch's Answers to the
2 Complaints. I have got the original demand letter
3 from Montlick & Associates dated August 9th relating
4 to, uh, the death of Andrew Evans, uh, the initial
5 disclosures of Mr. Hirsch, direct preliminary report
6 and discovery plan, the scheduling order, the
7 Plaintiff Direct General Insurance Company's Answer to
8 the Defendant Counterclaim, initial disclosures of
9 Plaintiff Direct General Insurance Company, the
10 Supplementation Initial Disclosures.

11 So, I have some things here but I
12 don't think these are all the pleadings. I have some
13 pleadings.

14 Q. Were there any pleadings that you needed or
15 requested that you were not provided?

16 A. No.

17 Q. Okay. Did you review all of the documents in
18 that binder?

19 A. I reviewed -- I skimmed most of the documents
20 in this binder. I focused on probably two or three of
21 them, specifically the demand letter, the demand
22 letters, uh, from Montlick & Associates relating to
23 Andrew Evans and Nancy Evans.

24 I also spent some time reviewing,
25 uh, the response letter from Mr. Amand, which I

1 believe there's two dates. I have got a copy that
2 says September 5th but I believe the actual copy was
3 September 6th, but the September 5th or 6th letter
4 from Mr. Amand were responding to those demand letters
5 from Montlick & Associates I spent some time with.

6 Q. Okay. So, those three documents were the
7 ones that you focused on, correct?

8 A. Yes, but I also reviewed the claims files,
9 uh, for Allstate, GEICO, and Country Financial. Uh,
10 those were provided to me. So, I did review those
11 demand letters and those correspondence between the
12 parties relating to those claims, as well.

13 So, I am familiar with -- and I
14 spent most of my time realistically with the Country
15 Financial, uh, file which was the liability insurer
16 for Shannon Justice.

17 Q. And why did you spend most of your time on
18 the Country Financial file?

19 A. Uh, I think the others were UM coverage, uh,
20 which I didn't feel were really relevant to this case.
21 So, I did focus on the other hope demands to the other
22 potential liability insurer, uh, which would have been
23 Shannon Justice's insurer which is Country Financial
24 just to see what happened on that, uh, with those
25 demand letters and how Country Financial responded to

1 those letters.

2 Q. Okay. And the binder that you're referring
3 to now that's in front of you, um, that you just
4 discussed, there were two demands in this and also Mr.
5 St. Amand's September 6th letter, uh, is there a cover
6 sheet on that binder or anything that -- I guess, is
7 it labeled as anything in particular, or I mean like
8 on the front, like on the front cover?

9 A. It says pleadings, Binder 1.

10 Q. Okay. So, Binder 1?

11 A. Yes. It's four binders, I believe. Uh, one
12 had -- two of them had depositions that I believe -- I
13 do have one of the other binders here. Let me see
14 what this one is labeled. Um, this is Binder 4 and
15 it's document production. I think this is the binder
16 that had a lot of the claims information, claims
17 files, from GEICO, Allstate, and Country Financial.

18 Q. Okay. And did you review documents in that
19 binder for your deposition today?

20 A. I did.

21 Q. Okay. Which documents?

22 A. As I said, I skimmed the files for Allstate
23 and the other UM, but I focused on a lot of the
24 documents relating to the Country Financial
25 interaction.

1 Um, so, I did review the demand
2 letter from Montlick to Country Financial. I did
3 review the response letters, uh, that counsel sent
4 seeking clarification to several questions that they
5 had about the relationship between the parents of Mr.
6 Andrew Evans, uh, also seeking clarification as to the
7 estate claims.

8 Um, I can't remember all of the
9 things they sought. I know they sought clarification
10 on a number of points. I saw that there were numerous
11 letters back and forth relating to those
12 clarifications from Montlick & Associates responding
13 to those, uh, letters seeking information. So, I did
14 focus on that.

15 I ultimately saw that Country
16 Financial tendered its insurance limits within the
17 timeframe, uh, of the initial demand.

18 Q. Okay. And do you know if, um, their tender
19 was accepted?

20 A. It was.

21 Q. Okay. And do you know, um, who accepted the
22 tender?

23 A. Well, Montlick sent a demand and it was
24 accepted by, I don't remember the firm that ultimately
25 sent the letter accepting, uh, the initial demand of

1 the policy limits. I could look if you would like me
2 to, but --

3 Q. Do you know if the claim, uh, which -- was it
4 for Andrew Evans?

5 A. I believe it was both for Andrew Evans and
6 Nancy Evans. So, I think it was \$100,000.00 -- I
7 think it was \$100,000/\$300,000 policy. And I believe
8 it was \$100,000.00 for the death of Nancy Evans and
9 then \$100,000 dollars for the death of Andrew Evans,
10 which was divided equally between his parents, \$50,000
11 each.

12 Q. Okay. And who are Andrew Evans parents?

13 A. Christopher Evans and, um, if you don't mind
14 me looking. I know it's -- I know she's in the
15 pleadings, um --

16 Q. You don't know off the top of your head what
17 her name is?

18 A. I know it's like Desiva(phonetic)
19 Polina(phonetic), or something like that.

20 Q. Close, but not close.

21 A. Um, oh, Polina Denissova, yes.

22 Q. And you said that there ae two -- there's
23 four binders in total. So, I'm assuming there are two
24 other binders, right?

25 A. There are. I believe they are depositions,

1 mostly depositions. Again, I didn't review all of the
2 depositions. I reviewed the two that I mentioned.

3 Q. And the two that you reviewed, uh, were, um,
4 Matt Hagen's and Michael St. Amand's, correct?

5 A. That's correct.

6 Q. Okay. In connection with the work that you
7 performed with respect to this litigation, have you
8 reviewed any other deposition transcripts?

9 A. Not in this matter, no.

10 Q. Okay. Have you reviewed any deposition
11 transcripts of Direct General's employees?

12 A. I did not.

13 Q. Okay. Where is your entire file regarding
14 this litigation?

15 A. In my office.

16 Q. Okay. And is that on your computer?

17 A. No. It's in the binders. I don't have
18 anything electronic. Everything is paper copy.

19 Q. Okay. So, your files are kept all in paper,
20 is that correct?

21 A. For this matter, yes.

22 Q. And how do you maintain your paper files?

23 A. Well, I was provided a box with the four
24 binders and I just keep everything in that same box.

25 Q. And when were you provided the box of

1 binders?

2 A. That is a good question, um, probably in May,
3 I want to say. Sometime in May. I don't have a
4 specific recollection.

5 Q. Okay. Other than the four binders that were
6 provided in the box you believe in May, were you
7 provided with any other documents?

8 A. I was not.

9 Q. Okay. Did you request any specific documents
10 that you needed to review for your report?

11 A. I did not.

12 Q. Okay. Do you have any documents that have
13 not been produced that are saved on your e-mail?

14 A. I don't believe there are any. I don't
15 believe I have anything via e-mail, no. Everything --

16 Q. Okay.

17 A. -- everything was printed out and placed in a
18 binder.

19 Q. Okay. And did you review the subpoena duces
20 tecum in connection with your deposition today?

21 A. I did not.

22 Q. Okay. I'll show you the document.

23 MS. CRONAN: This is going to be
24 Exhibit 1.

25 (Whereupon, Exhibit 1 was marked for

1 identification as of this date.)

2 BY MS. CRONAN:

3 Q. Okay. Exhibit 1, um, is going to be actually
4 a composite exhibit. Um, it's going to be your notice
5 and this, uh, deposition notice.

6 Can you see this?

7 A. It's not on my screen. It just says Candace
8 Cronan has started screen sharing, but it does not
9 show a document.

10 MR. DOLDER: Yeah, I don't see one
11 either.

12 MS. CRONAN: You know, it's weird.
13 My screen is frozen now, and I can't stop
14 sharing. I'm frozen, too, on my screen which
15 is really strange.

16 THE WITNESS: You're coming through
17 clear on our end.

18 MS. CRONAN: Yeah, I'm completely
19 frozen on my screen.

20 VIDEOGRAPHER: I just stopped screen
21 sharing to see if that helps.

22 MS. CRONAN: Okay. It's frozen.

23 MR. DOLDER: Candace, we can hear
24 you but I don't see any image.

25 THE WITNESS: I can see you.

1 MS. CRONAN: Yeah, I'm completely --
2 my computer is completely locked up now. Can
3 we take a break for a second?

4 THE WITNESS: Sure.

5 VIDEOGRAPHER: Off the record, 10:21
6 a.m.

7 (Whereupon, there was a pause in the
8 proceeding.)

9 VIDEOGRAPHER: Back on the record,
10 10:25 a.m. Go ahead.

11 BY MS. CRONAN:

12 Q. Um, Mr. Lopez, I'm going to enter this as
13 Exhibit 1, and it's the subpoena to testify at a
14 deposition in a civil action. This was the one that
15 was served on you, and also, um, the notice of taking
16 videotape deposition of you.

17 So, I'll enter this as composite
18 Exhibit 1.

19 MR. DOLDER: I'm going to object to
20 the form of the question, and it assumes
21 facts that are not in evidence.

22 MS. CRONAN: Okay. Which facts?

23 MR. DOLDER: That you served it on
24 him.

25 MS. CRONAN: Okay. Well, okay.

1 I'll clarify that for Mr. Dolder.

2 It was not served on you personally,
3 however Mr. Dolder agreed to accept process
4 on your behalf.

5 MR. DOLDER: Probably not the right
6 venue for it, but that's incorrect.

7 BY MS. CRONAN:

8 Q. Okay. Well, why are you here today, Mr.
9 Lopez?

10 A. I mean, Mr. Dolder told me that there would
11 be a deposition today and asked me to attend, and I
12 did. I never received the subpoena to testify or the
13 notice of deposition. It was never served upon me.

14 Q. Okay. So, you have never seen the document
15 here, this subpoena? You have never seen this
16 document?

17 A. That is correct.

18 Q. Okay. So, it's four pages, and I'm happy to
19 show you. You have never seen this?

20 A. I have never seen that. No.

21 Q. Okay. And --

22 A. I'm here voluntarily. I'm not here because I
23 received a subpoena.

24 Q. Okay. Did you know that, um, Direct General
25 did issue a subpoena that Mr. Dolder accepted?

1 A. Well, I think he mentioned there was a
2 subpoena. I don't think we ever discussed him
3 accepting it. I never gave him permission to accept
4 it on my behalf.

5 Q. Okay. If he had asked you, would you have
6 not given him permission?

7 MR. DOLDER: Object to the form.

8 A. Hard to say, uh, because that's not what
9 happened. So, I don't know how to answer that. I
10 mean, I probably would have given him permission to,
11 but we never had that discussion.

12 Q. Okay. Were you asked to provide any
13 documents to Mr. Dolder for your deposition here
14 today?

15 A. He asked me for my notes this morning, which
16 I provided.

17 Q. Okay. And how many pages are your notes?

18 A. It looks like three, three pages.

19 Q. Okay. And is that the entirety of your notes
20 on this matter?

21 A. Yes, ma'am.

22 Q. Okay. And when were those notes prepared?

23 A. Uh, throughout my review. They were not
24 prepared at any one time. As I review documents I may
25 jot things down, so you'll see dates. As I came

1 across things there will be dates on here, some of my
2 initial impressions.

3 So, it would have been throughout my
4 review. They were not all created at the same time.

5 Q. Okay. Going back to some preliminary
6 matters, tell me, what is your highest, highest level
7 of education?

8 A. Juris doctorate Vanderbilt Law School.

9 Q. Okay. And where did you attain your law
10 degree?

11 A. Vanderbilt Law School.

12 Q. Okay. And what year did you graduate?

13 A. 2001.

14 Q. Okay. Did you have any special areas or
15 studies, um, absent of your legal studies?

16 A. No, just classes you need to do to graduate.
17 I mean, I may have focused a little bit more on
18 employment law but, um, that was just out of interest.

19 Q. Okay. And where did you attend
20 undergraduate?

21 A. Vanderbilt University.

22 Q. And what year did you graduate?

23 A. 1998.

24 Q. And what was your major?

25 A. Political science.

1 Q. Okay. And did you attain a bachelor's of
2 science?

3 A. That's correct.

4 Q. Okay. Do you have any teaching experience?

5 A. No direct teaching experience. Uh, I -- when
6 I served as a judge I would often be asked to come
7 speak to law students at the various law schools in
8 Georgia on numerous topics, um, brief writing,
9 professionalism, evidence.

10 Um, so I did, you know -- I would do
11 like guest lecturing at the law schools. I also did a
12 fair amount -- to this day I still do a fair amount of
13 teaching at, uh, the Judicial College in Georgia.

14 Uh, when I was a judge I would be
15 asked to speak on numerous topics, and I am still
16 asked to speak on topics related to being a judge.

17 Q. So, these, uh, speaking, are these like
18 seminars or are they courses?

19 A. So, judges in Georgia, particularly state
20 court judges have two conferences a year which is
21 where they get their credits, their continuing
22 education credits, uh, and that's where most of the
23 judges attend to get their credits over two
24 conferences. So, I'm often asked to speak at those
25 conferences.

1 Q. Okay. And what are the topics of your, uh,
2 speaking engagements?

3 A. Uh, I have spoken primarily on, um,
4 interpreter issues, how to handle interpreters and the
5 legal issues surrounding, um, Defendants that do not
6 speak English. That was an area that I focused on a
7 great deal.

8 I was a member, and I'm still a
9 member of Commission on Interpreters in Georgia, and I
10 help draft the rules relating to the interpreters in
11 Georgia. So, I'm still asked to speak about some of
12 the legal issues having to deal with the individuals
13 who do not speak English, uh, sort of an access to
14 justice issue.

15 I also now speak a fair amount as to
16 the judicial ethics. I am on the Judicial
17 Qualifications Commission in Georgia, which is the
18 commission that regulates judges in Georgia. So, I am
19 asked to speak about judicial qualification issues and
20 judicial ethics.

21 Q. Okay. And are those speaking engagements,
22 the audience, is that limited to judges?

23 A. For the most part, yes.

24 Q. Okay. When you say for the most part, what
25 do you mean?

1 A. There might be staff attorneys that attend
2 from time-to-time or other judicial staff, uh, but the
3 primary audience are judges.

4 Q. Okay. Do you hold any professional licenses?

5 A. Law license.

6 Q. Okay. And where, or what state is your law
7 license in?

8 A. Georgia.

9 Q. Okay. And when did you attain that license?

10 A. I graduated in 2001 but because I clerked for
11 a year -- I did pass the bar in 2001, uh, but because
12 I clerked for a year, I was not sworn in until 2002.
13 So, I guess my law license would be 2002.

14 Q. Okay. And where did you clerk after law
15 school?

16 A. Federal District Court of Puerto Rico.

17 Q. Okay. And which judge were you assigned to?

18 A. His name was Hector Laffitte. He is no
19 longer on the bench.

20 Q. Okay. Do you have any professional
21 certifications?

22 A. I'm not sure what you are asking. Could you
23 clarify?

24 Q. Not necessarily as an attorney but just in
25 general, have you taken any courses and received any

1 certification?

2 A. I don't think so. No, nothing comes to mind.

3 Q. Okay. Where are you currently employed?

4 A. I'm a partner at DelCampo, Grayson & Lopez in
5 Dunwoody, Georgia.

6 Q. Okay. And what county is Dunwoody, Georgia
7 located in?

8 A. It's DeKalb County.

9 Q. Okay. And how long have you been employed as
10 a partner at DelCampo, Grayson & Lopez?

11 A. Since September of 2021.

12 Q. Okay. And where were you employed prior to
13 September of 2021?

14 A. I served as a state court judge in DeKalb
15 County from 2010 until 2020.

16 Q. Okay. And when you were a state court judge
17 what type of cases were you assigned to?

18 A. So, state court handles criminal misdemeanor
19 matters, so no felonies, and then on the civil side
20 pretty much any large civil action, um, medical
21 malpractice, products liability, wrongful death.

22 Uh, we also handle a fair number of
23 just law cases, uh, anything that did not require, uh
24 -- that did not have equity as an issue. So, if
25 you're asking for equitable relief, you would have to

1 go to superior court and I have no equity relief
2 powers.

3 So, we have no threshold on the
4 amount of damages. So, large wrongful death actions
5 were filed and small actions, as well. We also didn't
6 have any jurisdiction over real estate or, um, family
7 law matters. So, that would be exclusively in the
8 superior court.

9 So, I didn't have to do family law,
10 real estate law, or anything with equitable relief.

11 Q. Okay. Going back to your current employment,
12 uh, are you a W2 employee at DelCampo, Grayson &
13 Lopez?

14 A. I am not.

15 Q. How are you compensated?

16 A. I receive a K1, so distributions from the
17 profits.

18 Q. Okay. And are DelCampo and Grayson also K1
19 partners?

20 A. They are.

21 Q. Okay. Are there any other partners in your
22 law practice?

23 A. There are not.

24 Q. Okay. Do you have any other attorneys
25 working for you?

1 A. We don't.

2 Q. Okay. Prior to your judgeship where were you
3 employed?

4 A. I worked at a small firm called Foltz Martin,
5 also no longer in existence. Um, it was a small --
6 they did -- it had two sections, a real estate
7 corporate section and then a litigation section. I
8 was part of the litigation section.

9 Q. And how many years were you there?

10 A. Almost three.

11 Q. Okay. And before that where were you
12 employed?

13 A. I worked at a firm called Ashe, Rafuse &
14 Hill, also not in existence. I think there's a
15 pattern here. Um, as soon as I left those firms no
16 longer -- maybe I was legally holding them together.
17 Uh, yes, a small firm that did
18 mostly employment but had a small litigation section.
19 So, I did both employment class actions and
20 litigation.

21 Q. Okay. And now in the Foltz Martin firm, were
22 you handling defense work or plaintiff work?

23 A. Mostly defense work but we would take a
24 plaintiff's case from time-to-time, if it was a good
25 enough case. We also did some financial cases on the

1 plaintiff's side on the contingency basis. The vast
2 majority of my work was defense.

3 Q. And now at Ashe, Refuse & Hill were you doing
4 mostly defense and plaintiff side work?

5 A. The same. Mostly defense but we did take an
6 occasional plaintiff case. We actually took a couple
7 of those to trial. A couple of the plaintiffs cases
8 actually went to trial.

9 They were mostly in the employment
10 context where we represented the plaintiffs in those
11 cases.

12 Q. Okay. And before Ashe, Refuse & Hill where
13 were you employed?

14 A. I was at Holland & Knight.

15 Q. Okay. And what was your position at Holland
16 & Knight?

17 A. Just associate at Holland & Knight in the
18 litigation section, uh, mostly working in products
19 liability, uh, employment law, government relations,
20 business litigation, just wherever they needed me.

21 Q. Okay. And approximately what timeframe were
22 you employed by Holland & Knight?

23 A. It would have been after my clerkship, so
24 2002 until 2005.

25 Q. Okay. And why did you leave Holland &

1 Knight?

2 A. I wanted to get more trial experience. Uh,
3 as an associate of a big firm you don't really get to
4 try a whole lot of cases. I went to a trial heavy
5 firm that did a fair amount of trials, and I got to
6 try several cases at my next firm.

7 Q. Okay. In your current position at DelCampo,
8 Grayson & Lopez what are your primary practice areas?

9 A. So, we do wrongful death and catastrophic
10 injury cases. Um, so, that could encompass most any
11 area of law.

12 In the last three years I have
13 handled a large product liability case, time
14 manufacturer. We do several premises liability cases
15 where individuals are, you know, injured at an
16 apartment complex or a shopping center usually as a
17 result of third-party criminal act.

18 I do a fair amount of medical
19 malpractice cases, um, car wreck cases, trucking
20 cases. We have had several large trucking matters,
21 just a little bit -- whatever results in, like I said,
22 wrongful death or catastrophic injuries.

23 So, we are not a volume shop, so we
24 don't have a lot of cases but a lot of our cases are
25 significant.

1 Q. Okay. And are those mostly plaintiff of
2 defense cases?

3 A. All plaintiff.

4 Q. Okay. Do you do any defense work at all?

5 A. I do not.

6 Q. Okay.

7 A. Uh, hold on. I did one case for the
8 defendant as an employment matter. I represented a
9 doctor, uh, who was sued by her practice.

10 So, yes. I represented a defendant
11 in that case, but that's the only case where I
12 defended.

13 Q. Okay. Have you ever done any work for an
14 insurance company?

15 A. Yes.

16 Q. Tell me about that.

17 A. Uh, probably at Foltz Martin I think we had a
18 couple of insurance clients. I think Cincinnati was
19 probably the largest one. So, we handled whatever
20 they sent our way, um, slip and falls, premises cases.

21 Um, you're testing my memory. It
22 was a long time ago. It was not my primary focus but
23 I did handle several cases for them.

24 Q. Okay. Did any of those cases, uh, when you
25 were at that Ashe firm, did they involve any bad faith

1 claims?

2 A. At Ashe, no.

3 Q. Okay. In your current capacity do you, uh,
4 deal with insurance disputes or bad faith matters?

5 A. I do.

6 Q. Okay. And in what capacity?

7 A. As the plaintiff who's attempting to recover
8 for my clients. So, currently I think we have several
9 bad faith matters arising from verdicts that we have
10 attained.

11 Q. Okay. And so the cases that you're handling,
12 were you actually representing the claimants in the
13 underlying litigation?

14 A. Correct.

15 Q. Okay. And approximately what percentage of
16 your current practice, uh, relates to insurance claims
17 or bad faith matters?

18 A. Well, all our cases -- most of our cases
19 involve insurance claims.

20 Q. Okay.

21 A. Um, for personal injury, you know, a personal
22 injury firm typically will not take a case unless
23 there is something to recover.

24 Q. Right. Whether it be insurance or
25 self-insured, okay.

1 A. Correct, um, but mostly insurance.

2 Q. Okay. And so tell me, what about bad faith,
3 uh, matters, what percentage would you guess your
4 practice, uh, deals with, what percentage of bad faith
5 matters?

6 A. Well, that's sort of a loaded question. I
7 think all our cases have the potential to result in a
8 bad faith litigation. Um, if we are litigating, that
9 means we were not able to resolve it with a demand
10 letter, um, and we might be, you know, the defendant
11 might be in a bad faith posture at that point. There
12 might be some excess policy exposure at that point.

13 So, we do deal with these issues on
14 many of our cases. Now, in terms of actually getting
15 to the bad faith litigation, um, again, probably two
16 or three of our biggest cases right now are sort of in
17 that posture.

18 Q. Okay. But are they actively pending, um, in
19 a bad faith suit?

20 A. No. We are still in the appeals process, but
21 we fully anticipate that they will all end up in bad
22 faith litigation.

23 Q. Okay. Okay.

24 A. We have handled several bad faith cases, um,
25 but, again, it's a small number of cases that actually

1 get to the litigation portion of bad faith, but we
2 have had some those in the time that I have been at
3 the firm.

4 Q. Okay. So, you're drawing a distinction
5 between like allegations of bad faith versus ones that
6 actually go into suit with bad faith, correct?

7 A. Yes.

8 Q. Okay. Have you ever been employed by an
9 insurance company?

10 A. Directly, no. I have done insurance defense
11 work through my firms, but I have never been employed
12 by an insurance company.

13 Q. Okay. Have you ever had any other claims
14 that you were involved in that were against Direct
15 General Insurance Company?

16 A. I don't believe so, um, but maybe twenty-two
17 years of litigation I can't say with 100 percent
18 certainty that they have never been involved in one of
19 my cases. Off the top of my head, I can't think of
20 any.

21 Q. Okay. Do you subscribe to any professional
22 publications in connection with your work?

23 A. So, I receive -- I'm a member of the Georgia
24 Trial Lawyers Association. I receive, um, their
25 magazine. It usually has articles related to the

1 practice of law on the plaintiff's side. Um, through
2 the state bar I think I'm a member of the litigation
3 section and the product liability section.

4 Q. Okay. And when did you switch over from the
5 defense -- from the defense to the plaintiff's side?

6 A. Well, I became a judge for eleven years, so I
7 was not actively practicing law. Uh, so I have been a
8 full-time plaintiff's lawyer for the last three years.

9 Q. Okay. Do you follow any blogs on insurance
10 issues or insurance claims?

11 A. No.

12 Q. Okay. Have you ever authored any blogs on
13 insurance issues or insurance claims?

14 A. I have not.

15 Q. Okay. Do you consider yourself to be an
16 expert in any area?

17 A. Um, again, I think that question is a little
18 bit vague. I am well-versed in numerous areas, um,
19 relating to the practice of law and judging.

20 Um, here my focus in this case is
21 what a reasonable and prudent plaintiff's attorney
22 would do in a situation similar to the one in this
23 case where there are numerous claimants and
24 insufficient limits, and I think I would definitely be
25 an expert in that situation.

1 Q. And why is that?

2 A. It's a common situation that as a plaintiff's
3 attorney I encounter on a weekly basis, it's not
4 uncommon. Um, and based on my education, training,
5 experience, and knowledge, uh, I would definitely say
6 that I'm well-versed in how to handle those
7 situations.

8 Q. Have you ever retained an expert for the
9 subject matter for which you're testifying in this
10 matter?

11 A. I have not.

12 Q. Okay. What materials do experts in your
13 field generally rely on to render opinions such as
14 yours?

15 A. Pleadings in the case, um, the actual demands
16 and responses to those demands, uh, and any
17 correspondence relating to the underlying claimant.

18 Q. Anything else?

19 A. Claims file at issue, um, and any other
20 claims files related to any insurance questions,
21 insurance policies that may cover this particular
22 wreck.

23 Q. Okay. Have you ever served as an expert
24 witness in any matter before?

25 A. I have been engaged to be an expert on fees,

1 9-11-68 fees on one occasion, but I was never -- I
2 don't think the case ever made it, uh, into a hearing
3 posture.

4 Q. Okay.

5 A. I signed an affidavit on fees.

6 Q. Okay. So, other than your -- that instance
7 of having an affidavit on fees, was there any other
8 instance where you served as an expert in any matter?

9 A. No.

10 Q. And who retained you to serve as an expert in
11 that matter?

12 A. In that matter, that would have been the
13 plaintiff's attorney that was successful, uh, at
14 trial, and I can't remember who it was off the top of
15 my head.

16 Q. Do you remember what the case style was, the
17 name of the case?

18 A. I don't. Actually now that I think about it
19 it was Daren Summerville, the plaintiff's attorney in
20 town, but I don't recall -- I believe it was a dental
21 malpractice case, uh, where they obtained a 10 million
22 dollar verdict at trial, but I don't know the style of
23 the case off the top of my head.

24 Q. Do you recall how much, uh, time was incurred
25 approximately that you were, I guess -- what was the

1 subject of your declaration or affidavit?

2 A. I think that was opining as to the
3 reasonableness of the fees and the hourly rate that
4 was being sought, um, plus the reasonableness of the
5 hours expended in obtain that verdict, but I don't
6 recall the details, how much the fees were or how many
7 hours they were claiming to try to get reimbursed for.

8 Q. Okay. Do you recall, uh, how much you were
9 compensated in that matter?

10 A. I don't believe I was compensated. Um, I was
11 asked to do it. You know, this is the thing, as a
12 former judge I get called on a lot of issues and
13 people ask me to do things. It's not my primary
14 revenue source.

15 So, I'm sure I should have billed
16 them. I'm sure I quoted something but, you know, it
17 took me less than an hour to do the affidavit. So, I
18 probably didn't send a bill. So, I don't think I was
19 compensated.

20 Like I said, the case was not really
21 -- I was not deposed and I never had to testify at a
22 hearing or a trial. So, my, um -- the case -- my
23 involvement in the case was very limited.

24 Q. Who retained you in this matter?

25 A. It would be Mr. Rich Dolder on behalf of Max

1 Hirsch.

2 Q. Okay. And who contacted you in connection
3 with this matter?

4 A. Mr. Rich Dolder.

5 Q. And when did he contact you?

6 A. Probably April, May timeframe.

7 Q. And how was the contact made?

8 A. I believe he called me, and then we set up a
9 lunch, uh, to go and discuss my potential involvement
10 in this case. So, we had lunch together.

11 Q. Okay. And do you recall approximately when
12 that lunch occurred?

13 A. It would have been in the spring, so I think
14 in the April May timeframe, um, probably May of this
15 year.

16 Q. Have you ever worked with Mr. Dolder before?

17 A. I have not.

18 Q. Was this the first time you have ever met Mr.
19 Dolder face to face?

20 A. I think we met before. I'm very familiar
21 with his firm and his partners, but it's the first
22 time we spent this much time together, yes, and got to
23 know each other.

24 Q. Okay. And what were you told in connection
25 with this matter?

1 A. Uh, he asked me, uh, if I was familiar with
2 the case, which I believe I had read about in the
3 Legal Fulton Daily. I know Mr. Hagen very well. So,
4 I remember seeing the headlines.

5 Um, he informed me sort of the
6 factual basis of the case and what happened in the
7 underlined case, and leading up to the trial of the
8 verdict, and then he discussed -- I mean, we discussed
9 my potential involvement as an expert for limited --
10 for the limited purpose of discussing what a
11 reasonable and prudent plaintiff's attorney would do
12 in similar circumstances.

13 Q. Okay. And is there anything else that you
14 were provided with regard to the case?

15 A. At that time, no. Um, I think it was
16 probably a week or two later he dropped off the books
17 with the binders --

18 Q. Okay.

19 A. -- for my review.

20 Q. Okay. Did Mr. Dolder, uh, ask you if you had
21 been an expert before?

22 A. I'm sure he did.

23 Q. Okay. And did you tell him that you hadn't
24 ever served as an expert in a similar matter?

25 A. Correct.

1 Q. Okay.

2 A. I think he is aware that I have not served as
3 an expert.

4 Q. And what are the terms of your fee
5 arrangement with Mr. Dolder?

6 A. \$600.00 an hour.

7 Q. And how did you come to that, uh, hourly
8 rate?

9 A. So, my -- I'm a mediator. I mediate roughly
10 \$1,100.00 an hour. Um, I felt that that was pretty
11 too excessive. So, \$600.00 seems like a reasonable
12 amount for my time.

13 Q. And is Mr. Dolder the one that specifically
14 retained you?

15 A. I'm sure I'm retained by Max Hirsch through
16 Mr. Dolder. The client's retaining me.

17 Q. Okay. And who is paying you?

18 A. Good question. I believe probably Mr.
19 Dolder's firm.

20 Q. Have you received any compensation to date?

21 A. I have, uh, \$6,600.00.

22 Q. Okay. So that is approximately ten hours,
23 correct?

24 A. More or less, yes.

25 Q. Okay. And were those ten hours, uh, expended

1 preparing the report?

2 A. It was probably to review, and then it
3 includes the report but it also includes the review of
4 documents.

5 Q. Okay. Other than the \$6,000 that you have
6 been paid, are there any outstanding invoices?

7 A. Yes. Probably I have expended probably
8 another eight hours, um, in preparation for this
9 deposition, plus the time today.

10 Q. Okay. Were you given any restrictions or
11 limitations on what your report was going to be?

12 A. No. I don't think so. I mean, I was asked
13 to opine as to what a reasonable plaintiff's attorney
14 would do in this situation. So, I limited my review
15 of the documents to try to answer that question, but,
16 no, I was not restricted or -- I mean, I was given an
17 assignment and I reviewed the documents and came up
18 with an opinion.

19 Q. And who selected the materials that you
20 reviewed?

21 A. Mr. Dolder provided the binders that I have.

22 Q. Okay. Were you aware that there are other
23 materials on this matter that you were not provided?

24 A. I'm sure there are. That's not surprising.

25 Q. Okay. If you had been aware of these

1 materials would that have changed your opinion here
2 today?

3 A. I believe you would have to show me something
4 specific. I'm not going to speculate as to what I
5 have not seen.

6 Q. Okay. But what you have reviewed or relied
7 on is stated in your report, correct?

8 A. Correct -- well, not what I reviewed. My
9 report is based on my review, but I don't believe --
10 yes, actually, sorry. There is the addendum, correct,
11 yes.

12 Everything I reviewed that I needed
13 to, uh, complete the report is stated in the addendum.

14 Q. And who prepared that addendum to the report?

15 A. Mr. Dolder.

16 Q. Did you have any input in that addendum?

17 A. The addendum is a list of all of the
18 documents that he provided to me. I reviewed the
19 addendum and verified that it was accurate.

20 Q. Is there anything that you decided that you
21 would not rely on that was on the list?

22 A. I don't think I made a conscious decision not
23 to rely on something, no.

24 Q. What did you perceive your role to be in this
25 case?

1 A. To opine as to what a reasonable and prudent
2 plaintiff's attorney would do in a situation where
3 there are multiple claimants and insufficient limits.

4 It's very limited to serve the
5 beginning portion of the case where an attorney is
6 reviewing, uh, a potential claim and what the next
7 steps would be, and what appropriate actions should be
8 taken at that point.

9 So, my opinion is very limited. I'm
10 not here to opine as to internal insurance practices
11 or procedures. It very much is limited to what the
12 attorney, you know, standing in the plaintiff's
13 attorney's shoes would and should do.

14 Q. And which plaintiff attorney are you
15 referring to?

16 A. I believe in this case it's Rory Chumley from
17 Montlick & Associates.

18 Q. Do you know Rory Chumley personally?

19 A. I do not. I have never met Mr. Chumley.

20 Q. Okay. But when you're referring to a
21 plaintiff's attorney you're referring to Rory Chumley,
22 correct?

23 A. Correct.

24 Q. Tell me, what is your opinion?

25 A. My opinion is that in a situation like this

1 where there were numerous claimants with incredibly
2 significant damages, um, that a plaintiff's attorney
3 is representing, you know, some of the claimants as to
4 act quickly, uh, because there's a race to the limits
5 at that point.

6 Because at that point, you know, an
7 experienced plaintiff attorney knows that in this type
8 of situation there is probably not sufficient limits.
9 It's not a commercial vehicle. It's not a business
10 vehicle. It's a personal vehicle.

11 Georgia law requires \$25,000.00 as a
12 minimum. We always start from the assumption that
13 that's what we are kind of racing for in those types
14 of situations when there are individuals involved.
15 So, in that case, uh, a reasonable plaintiff's
16 attorney is going to try to send a demand letter as
17 quickly as possible because you are sort of at a race
18 with the other claimants for those limits.

19 In this case in particular, which
20 involve deaths, uh, we know that the damages far
21 exceed whatever might, uh, be available in insurance
22 limits. So, getting out the demand letter as quickly
23 as possible is critical, uh, to represent your client
24 in the most effective and zealous way.

25 Q. And the first part when you're saying, um,

1 the whole race to the finish, is that what you're
2 saying?

3 A. Race to the limits.

4 Q. Race to the limits. Tell me more about that
5 verbiage.

6 A. Well, uh, Georgia permits the insurers, uh,
7 to deplete or payout other claimants without taking
8 into consideration who else might be involved, or who
9 else might have a claim. So, under that standard, if
10 I know that there are other claimants, and in this
11 case there would have been at least Mr. Chumley
12 represented Mr. Evans, Chris Evans, uh, as the son,
13 surviving son of Nancy Evans as a father of Andrew
14 Evans. So, he would have had two of the death claims,
15 uh, that he was representing.

16 He knows there's at least one other
17 death claim, Mr. Louis also perished in that accident,
18 and we know there were individuals in the other
19 vehicle, the Justice vehicle, who were injured. So,
20 there were numerous claims, all of whom have claims
21 for the same amount of insurance that's at issue in
22 this case.

23 So, Mr. Chumley has a duty to try to
24 get his demand letter out as quickly as he possibly
25 can in order to put his clients in the best position

1 to maximize their recovery, uh, particularly in this
2 kind of case where there are insufficient, most
3 likely, you know, he's assuming insufficient limits,
4 and it turned out there were insufficient limits.

5 So, if you get your demand out
6 first, the insurer has to respond most likely to your
7 claim, um, because you're -- they are on the clock, 30
8 days, to respond to your claim, and the likelihood
9 that your claimants could potentially get the limits
10 is increased if you get the letter out first.

11 Q. Okay. And is that based on your experience
12 as a practicing attorney?

13 A. Absolutely.

14 Q. Okay.

15 A. Excuse me, as a practicing plaintiff's
16 attorney, absolutely.

17 Q. Okay. And is Mr. Chumley's conduct at issue
18 in this case?

19 A. I'm not sure I understand your question.

20 Q. Well, it seems as though your opinion, uh,
21 you know, references, uh, actions that were taken by
22 Mr. Chumley. Is his conduct at issue in this case?

23 A. My opinion is that he acted appropriately and
24 represented his client, and that he did exactly what a
25 reasonable prudent plaintiff's attorney would have

1 done in like or similar circumstances.

2 Q. Okay. And do you know what the legal issues
3 are to be tried in this case?

4 MR. DOLDER: Objection, form.

5 A. I don't believe that's within the purview of
6 my expert opinion.

7 Q. Okay. And so in your expert opinion, um, if
8 you could just simply say that, please tell me for the
9 record what it is.

10 A. My opinion is that Mr. Chumley is the
11 attorney, uh, representing, uh, Mr. Evans acted
12 appropriately in sending a 9-11-67.1 demand letter on
13 behalf of Mr. Evans for the death of his mother, and
14 then separately sending a separate demand on behalf of
15 Mr. Evans for the death of his son, complied with
16 9-11-67.1.

17 He did it as quickly as he possibly
18 could because he was aware that there were other
19 claimants involved, and there most likely would be
20 insufficient limits to cover all the claims in this
21 case, um, and so he acted in an appropriate fashion in
22 getting those letters out as quickly as he could in
23 hopes of maximizing the potential recovery for his two
24 claims.

25 Q. Okay. Is it your opinion that, uh, Mr.

1 Chumley's letters complied with OCGA 9-11-67.1?

2 A. Yes. Absolutely.

3 Q. Okay. And --

4 A. As it existed at that time. It's been
5 amended several times since then, but as it existed at
6 that time, yes.

7 Q. Okay. And do you believe that there are
8 valid offers to settle?

9 A. Absolutely.

10 Q. And why is that?

11 A. If you read the letters there are clear
12 policy limits demands. Uh, they give the appropriate
13 timeframe, which is 30 days. They provide, uh, the
14 information that the statute requires as to what kind
15 of release would be granted. I believe it was a
16 limited liability release in this case. Um, so, it
17 complied with the material terms of 9-11-67.1.

18 Q. Okay. And other than your experience as a
19 plaintiff's attorney, uh, what is the precise basis
20 for your opinions in this matter?

21 A. Well, I did serve as a judge for eleven years
22 entrusted with the enforcement of statutes and
23 interpretation statutes.

24 Q. Okay. And anything else? Like did you
25 perform any testing or survey work?

1 A. No.

2 Q. Have you published any articles on this
3 matter?

4 A. No.

5 Q. Okay. And why was it reasonable and
6 consistent with the customary practice that you're
7 saying?

8 MR. DOLDER: Object to form.

9 A. If Mr. Chumley did not act quickly, one of
10 the other claimants could have potentially, Mr.
11 Willis, for instance, would have potentially sent in a
12 letter sooner than Mr. Chumley, through his counsel,
13 and could obtain the limits before Mr. Chumley could
14 do that for his client.

15 So, it would limit the amount of
16 money that would be available to pay out those claims.
17 Uh, you know, if Direct General received limits
18 demands or other demands from Mr. Louis, or the
19 Justices for that matter, that could have depleted the
20 entirety of the policy limit leaving Mr. Chumley's
21 clients with nothing.

22 So, he had to act quickly to ensure
23 that his clients could be protected and would have
24 some ability to recover in this case.

25 Q. Okay. Do you know if there had been any

1 other experts retained by Mr. Hirsch in this matter?

2 A. I'm sure there have been. I'm not familiar
3 with who they are.

4 Q. Okay.

5 A. Nor have they impacted my opinion in anyway.

6 Q. Okay. Do you contemplate developing any
7 other opinions or conclusions in this matter?

8 A. I do not. My opinion is very limited to what
9 the plaintiff's attorney would have done, you know, in
10 like or similar circumstances to what Mr. Chumley
11 faced when this case, you know, when he signed up this
12 case.

13 Q. Do you know if, uh, Christopher Evans ever
14 filed a bar complaint against Mr. Chumley?

15 A. I'm not aware. No.

16 Q. Okay. But to your knowledge there's no, um,
17 bar proceeding against Mr. Chumley, correct?

18 A. Not that I'm aware.

19 Q. Okay. And beyond the report that you
20 prepared and was served in this case, are you offering
21 any other opinions that are not in that report?

22 A. I am not.

23 Q. Okay. No, you're not -- there's no affidavit
24 or anything beyond that report, correct?

25 A. That's correct.

1 Q. Okay.

2 MS. CRONAN: Can we take a break? I
3 want to review those documents, Mr. Dolder.

4 MR. DOLDER: Sure. Thank you.

5 VIDEOGRAPHER: Off the record at
6 11:07 a.m.

7 (Whereupon, there was a pause in the
8 proceeding.)

9 VIDEOGRAPHER: Back on the record,
10 11:27 a.m.

11 (Whereupon, Exhibit 2 was marked for
12 identification, as of this date.)

13 MS. CRONAN: I want to mark the
14 expert report of Dax Lopez.

15 THE WITNESS: I want to make one
16 correction. Before I told you that it's
17 three pages of notes. I left one off. It's
18 four pages. So, hopefully you received four
19 pages.

20 MS. CRONAN: Yes, I did. It's four
21 handwritten pages.

22 THE WITNESS: Correct, yes. I
23 apologize for that.

24 MS. CRONAN: No worries. And this
25 is Exhibit 2. It's titled written report of

1 Dax Lopez, Esquire, prepared pursuant to Rule
2 26A2B.

3 BY MS. CRONAN:

4 Q. Have you seen this document before, Mr.
5 Lopez?

6 A. I have.

7 Q. Okay. And is this your expert report, uh,
8 for this matter?

9 A. It is.

10 Q. Okay. And it looks like it's a total of
11 eleven pages including exhibits, is that correct?

12 A. That sounds correct.

13 Q. Okay. And is this your entire report in
14 connection with this case?

15 A. It is.

16 Q. Okay. Were there any draft reports prepared
17 in connection with this case?

18 A. I believe this is substantially -- I'm sure
19 there were drafts, um, but this is substantially what
20 -- I don't think there were a lot of drafts that had
21 substantial revisions or edits.

22 Q. Okay. And the structure of this report, is
23 this, uh, a template that you, uh, obtained, uh, from
24 a source?

25 A. Mr. Dolder helped me with the, with the

1 structure. Yes.

2 Q. Okay. And what part of this is your own
3 versus Mr. Dolder's?

4 A. I believe Mr. Dolder sent me a draft copy,
5 um, at least an initial draft, and then I edited it,
6 um, but I can't tell you how much is his. I mean, I
7 think he did the first draft, uh, of the report and
8 sent it to me.

9 I reviewed it, and then I edited the
10 portions that I thought either needed editing or
11 deletion, but I don't have a red line to show what I
12 added versus what he did.

13 Q. Okay. And is there something that you're
14 looking for? I see you're looking in your binder.

15 A. No. I'm looking at the report.

16 Q. Okay. Okay.

17 A. Just the paper copy.

18 Q. And you said that, uh, Mr. Dolder provided
19 input. Uh, what portion of the report was input by
20 Mr. Dolder?

21 A. I believe he provided the first draft of the
22 report. He sent me a first draft.

23 Q. And now the statement of pages, the section
24 under number 1, is that prepared by you?

25 A. He provided a draft and I reviewed it, and he

1 edited it, augmented the portions that I thought
2 needed to be augmented and cleared up the things that
3 I thought needed to be cleared up.

4 Q. Do you recall specifically what revisions you
5 made?

6 A. I do not.

7 Q. Were there a lot of revisions?

8 A. I don't believe there were a whole lot of
9 revisions. I did add some things. I don't believe I
10 deleted anything but I did add to the report.

11 Q. Okay. Do you recall how long the report was
12 when you received it from Mr. Dolder?

13 A. I think it was about -- when I received it it
14 didn't have, I think Mr. Dolder -- no, I think it was
15 about four pages. I think that's right.

16 Q. It looks like it, yes. It looks like the
17 report itself is four and then your signature is on
18 page 5.

19 A. Correct.

20 Q. And what methodology did you use to base your
21 opinions on?

22 A. I based it on my, uh, knowledge, experience
23 and education as a plaintiff's attorney and as a
24 former judge.

25 Q. Okay. And how does being a plaintiff's

1 attorney and a former judge qualify you in this
2 matter?

3 A. Well, as a plaintiff's attorney I see these
4 situations everyday. I see these kinds of cases
5 everyday, uh, and I'm familiar with the appropriate
6 actions of an attorney who's representing a client.

7 As a judge I was often asked to
8 intervene in cases where there were bad faith issues.
9 As a judge I became familiar with the law of bad faith
10 and also interpreting, hope demands, hope statutes, and
11 the hope case were common issues that I would review
12 as a judge.

13 Q. Okay. Did you consult any manuals in
14 formulating your report?

15 A. No. I did not.

16 Q. Okay.

17 A. I did consult the statute.

18 Q. What statute are you referring to?

19 A. OCGA 9-11-67.1.

20 Q. Okay.

21 A. And I did review the case law that I cited.

22 Q. Okay. Were you provided those specific cases
23 by Mr. Dolder?

24 A. I believe they were the initial draft he
25 provided, but I was familiar with those cases from my

1 time on the bench.

2 Q. So, the handwritten notes that were provided
3 to us earlier today, um, they are four pages. Just to
4 confirm, those are all of your notes that you have in
5 connection with this matter?

6 A. That's correct.

7 MR. CRONAN: I'm going to enter the
8 the notes, I believe, as Exhibit 3.

9 (Whereupon, Exhibit 3 was marked for
10 identification, as of this date.)

11 BY MS. CRONAN:

12 Q. Okay. Can you see my screen okay? It's your
13 notes.

14 A. Yes. I can see them, and I have them in
15 front of me.

16 Q. Can you decipher them?

17 A. If you ask me to, I could probably give you
18 at least a good idea of what I was trying to say.

19 Q. So, at the top it says, uh, Tuesday at 3:00
20 p.m. What was that referring to?

21 A. Yeah, I believe, uh, that was a time that,
22 uh, I set up with Mr. Dolder to prepare for today.
23 So, Tuesday would have been this past Tuesday.

24 Q. Okay. And when was this, I guess this
25 portion of your notes, when was this prepared?

1 A. So, I just did a running, you know, I had a
2 note pad. I just kept it running. So, this first
3 page was probably a couple of weeks ago, two or three
4 weeks ago.

5 Q. Okay.

6 A. So, to be clear, I started reviewing this
7 case probably in late May but then my mother had a
8 medical emergency that took me out of the practice for
9 about three weeks. So, I probably didn't pick that
10 back up until June.

11 So, there was a gap probably from
12 the time I started drafting these notes until starting
13 my review. So, this is a compilation from probably
14 the last couple of months.

15 Q. Okay. Are these four pages -- were they, um,
16 like prepared on different dates or are they from the
17 same --

18 A. Correct.

19 Q. Okay.

20 A. Yeah, it was not a continuous -- these are
21 not four pages that were done at the same time. As I
22 picked up my review I just kept, you know, using the
23 same note pad from my review.

24 Q. And are these notes based on telephone
25 conferences with Mr. Dolder?

1 A. These are all related to my review of the
2 documents.

3 Q. So, were these notes that you kind of jotted
4 down as you were going through documents?

5 A. That is correct.

6 Q. Okay. And on page 2, if you look there is,
7 um, a note in the left margin. It says -- and I think
8 it says, correct me if I'm wrong, if I'm reading this
9 correctly it says, not designed to be difficult to
10 accept. Is that what it reads there?

11 A. That's correct.

12 Q. And what did you mean by that?

13 A. I think that relates to Mr. Chumley's
14 letters, demand letters. You know, in Georgia there
15 are some attorneys who are infamous for sending the
16 types of demand letters that are difficult to accept
17 in terms of the offer.

18 So, you know, they have very
19 unrealistic acceptance terms which are set
20 intentionally to try to trip up the insurance company.
21 So, I think I just noted in my review of these
22 demands, they are pretty straightforward demands with
23 pretty straightforward terms, and they were not
24 designed to be difficult to accept.

25 Q. Okay. And next to that in writing it says,

1 policies for the mother. Um, is that your -- does
2 that say Allstate letter, GEICO letter, is that
3 correct?

4 A. Yes. I think those -- I was looking at those
5 and I had some confusion as to who had the UM because
6 there are letters from both Allstate and GEICO. I
7 think ultimately I determined that GEICO had the UM
8 for the mom, Polina.

9 Q. Okay. And now in your notes there's a
10 reference to the estate here. I can't really read
11 this writing, but do you know what you were writing in
12 this box right here?

13 A. Yes. The time to create the estate takes
14 time, is the first -- I believe that's the first thing
15 I wrote. Uh, settled wrongful death not estate, and
16 then child has no assets.

17 So, I think I was just reminding
18 myself of why you won't set up an estate in certain
19 circumstances. So, in this situation where you have a
20 race to the limits, you don't have time to set up an
21 estate. Um, there are insufficient limits, so you
22 probably don't need the estate, um, for strategic
23 reasons, um, especially when a child has no assets and
24 no medical and no pre-death suffering. You're not
25 going to set up an estate in that situation. You

1 settle the wrongful death claim and not create the
2 estate.

3 Q. Okay. And under that in your notes it looks
4 like you have three numbered lines. Um, what is that
5 referring to?

6 It looks like it says -- I'm not
7 really sure actually. If you can tell me, it says
8 normal and I can't really read the rest.

9 A. Yeah, uh, normal like demands, meaning I
10 thought the demands in this case were pretty standard,
11 uh, nothing, uh, out of the ordinary.

12 Um, this goes back to my previous
13 note, not a set up. So, it's not designed, uh, to set
14 up the insurance company as some of the demands that
15 we have seen, uh, in other cases.

16 Um, let's see, oh, normal dispute of
17 estate claim after rejection. So, after the rejection
18 of the demand it's not uncommon to, at that point,
19 revisit the issue of the estate as to whether you
20 would want to pursue an estate claim in the
21 litigation.

22 Q. Okay. And do you recall if Mr. Chumley
23 stated anything with regard to establishing an
24 estate?

25 A. Yes. He said he was not going to establish

1 an estate.

2 Q. Okay. And do you know if he ever did
3 establish an estate?

4 A. I believe an estate was eventually
5 established, and then ultimately it was dropped when
6 they did some discovery and realized there was no
7 discernable pre-death pain and suffering.

8 Q. Do you know why he would affirmatively state
9 that an estate would not be created in the letter?

10 A. Well, under Georgia law you can settle just
11 the death claim, the wrongful death claim. You don't
12 need to do the estate claim. Um, that happens all the
13 time.

14 Uh, wrongful death claims are
15 settled all the time without the estate claims. It
16 actually happened in this case. Uh, Country Financial
17 settled the wrongful death claim after it had some
18 initial questions about the estates and they asked
19 clarification questions about whether the estate would
20 be set up, or whether there would be an estate, and
21 they were informed that they would not be created.
22 They went ahead and settled the wrongful death portion
23 of the case, and not the estate case. So, that
24 happens all the time.

25 Q. Do you know if Mr. Chumley was aware of the

1 policy limits at the time the demand letters were
2 sent?

3 A. According to his letter he was not, um, and I
4 did not see anywhere in the file any written
5 disclosure pre-demand of what the policy limits were.

6 So, I don't know what Mr. Chumley
7 knew, but from the file that I received there was no
8 pre-demand disclosure in writing, um, and his letter
9 seems to indicate that he was not aware of what the
10 policy limits were.

11 Q. Do you know if he informed any other carrier
12 that he was aware of the policy limits for the Direct
13 General policy?

14 A. I do not. I have never spoken to Mr.
15 Chumley.

16 Q. Did you review any documents that would
17 reflect whether or not he was aware of the policy
18 limits?

19 A. I do not believe I saw any documents that
20 would reflect such a -- would reflect his knowledge.

21 Q. Okay. And how going to, uh, page 3, it says
22 race to the limits. Um, what made you write that on
23 this page?

24 A. I think that's what we have been talking
25 about. Uh, in this situation where you have multiple

1 claimants and insufficient limits you as a prudent and
2 reasonable plaintiff's attorney are going to worry,
3 uh, that the limits might be exhausted on another
4 claimant before your client has an opportunity to make
5 a demand.

6 So, it really is a race with the
7 other attorneys who are representing the other
8 claimants to see who could get the demands out as
9 quickly as possible.

10 That's one of the reasons you won't
11 set up an estate in this case. Estates take a long
12 time to set up, uh, and you can delay your ability to
13 send out those types of demands.

14 So, you don't want the insurer, uh,
15 to exhaust his policy limits on other claimants,
16 because if they do that, your client will be out of
17 luck and may not be able to recover anything in this
18 case.

19 Q. Okay. And to your knowledge and from your
20 review of the file, how did Direct General stop the
21 demand letters, uh, that were sent by Mr. Chumley?

22 A. I believe there was the September 6th letter
23 from Mr. St. Amand, uh, that basically requested that
24 they have a global summit conference to allocate, uh,
25 the limits among the different claimants.

1 Q. Okay. And do you know if Mr. Chumley
2 attended the global settlement conference?

3 A. I do believe I did see that in the -- in the
4 depositions that I reviewed from Mr. Hagen and Mr.
5 Amand that Mr. Chumley showed up. There was some
6 testimony that he showed up but not participate in the
7 settlement conference.

8 I believe Mr. St. Amand said he
9 showed up but he said he would not be participating in
10 the settlement conference.

11 Q. Do you think that's unusual to show up and
12 not participate in the settlement conference?

13 A. Um, I don't know if I have an opinion to
14 whether it's unusual or not. I mean, he may have
15 showed up to see what was going on, but again, Direct
16 General had missed the 30 day deadline. So, you have
17 different conversations with your client at that
18 point.

19 You have options after that point
20 that did not exist when you send the demand letter,
21 meaning there might be some bad faith exposure and you
22 have to explain that to your client, uh, that that
23 might be an option in this case.

24 Q. Do you know if, uh, the letter from St. Amand
25 on September 6th was within the 30 day time period?

1 A. I believe it was.

2 Q. Okay. And do you know how long after the
3 global settlement conference took place?

4 A. Not off the top of my head, I don't.

5 Q. Okay. Do you recall off the top of your
6 head, do you know who else attended the global
7 settlement conference?

8 A. If I recall correctly from the depositions,
9 uh, Matt Hagen attended. Um, Mr. Chumley showed up
10 but was not there to participate, and I think Glenda
11 Mitchell may have attended, as well, but I was not
12 really focused on those claims because that's not part
13 of my opinion.

14 Q. Okay. And under this race for the limits,
15 uh, what does it say there?

16 A. Um, I have one won some races, lost others --
17 or lost races. So, meaning personally, myself, uh,
18 when I'm in Mr. Chumley's position there have been
19 times where I was the first to send the demand and we
20 were able to secure policy limits for my clients as
21 opposed to other claimants, and then there have been
22 other situations where a client engaged me too late
23 and someone else had already secured, uh, the policy
24 limits for their claim leaving my client without an
25 ability to recover.

1 Q. Okay. So, it was -- what was the purpose of
2 that note?

3 A. Just to remind myself that this happens all
4 the time. Um, you know, again, you're acting
5 reasonably on behalf of your client. You are going to
6 win some and lose some.

7 Certainly if it's within your
8 control, meaning I am engaged today and I'm aware that
9 no other letters have gone out, that I have got to get
10 my letter out. I can't procrastinate.

11 There are other situations where a
12 client will come just too late or hire you too late
13 and someone else has already sent the letter. Um,
14 that happens frequently.

15 Q. How often would you lose, um, the race to the
16 limits?

17 A. Sadly probably more than I care to admit. I
18 could think of at least two cases off the top of my
19 head that happened fairly recently.

20 Q. Okay. And under that note it says
21 proactively tendered, is that correct? Is that what
22 it says?

23 A. Yeah. So, I have had -- so, that's a
24 reference to a case that I had. So, these are cases
25 that sort of relate to the issues we are talking

1 about.

2 So, the Soto case, which is often a
3 margin, also one of the other cases listed there, is a
4 case where the insurance company sent out a letter
5 proactive tendering the limits before any demand was
6 received and asking the parties to attend a global
7 settlement conference. That's before receiving any
8 demands from any of the plaintiffs attorneys in that
9 situation.

10 Q. And what are the the other cases that are
11 referenced there?

12 A. Uh, the Moltry(phonetic) case is a case where
13 we won the race to limits. There were five deaths and
14 five catastrophic injuries and only \$100,000 on
15 limits. Uh, and because we were able to set out our
16 demands before anyone else, we were able to attain the
17 \$100,000. Unfortunately, eight claimants did not
18 recourse in that case.

19 Uh, the Cornell case I think is a
20 case where we settled the, uh, wrongful death portion
21 without settling the estate claims. There was no
22 estate set up, and we settled just the wrongful death
23 portion of those claims. Those were significant
24 claims in the millions of dollars.

25 Q. Okay. And why did you specifically note

1 those particular cases?

2 A. I thought they related to some of the issues
3 that we are dealing with in this case, you know,
4 winning and losing the race, having global settlement
5 conferences before versus after demands, and being
6 able to set wrongful death without estate claims. I
7 just want to make sure I remembered the cases where we
8 have done those things.

9 Q. Okay. And on that same page it looks like
10 you're saying are there -- I can't really read the
11 rest.

12 A. Oh, at the bottom there?

13 Q. Yes.

14 A. Are there cases in 11 circuit real estate
15 claims. That was just for myself. I really didn't do
16 any research on that. Um, the estate claim is not
17 part of the demand, can insure or ignore the demand.
18 I think that was a note to myself to maybe look at
19 that one day.

20 Again, it didn't really relate to my
21 overall opinions, and I don't think I did any
22 research.

23 Q. Why did it not relate to your overall
24 opinion?

25 A. Because my overall opinion has to do with

1 what the reasonable actions of a plaintiffs attorney
2 are in like or similar circumstance. Plaintiffs
3 attorneys settle, uh, wrongful death cases all the
4 time without having to settle the estate claim. That
5 happens daily.

6 Q. Okay. And it says -- it looks like it says
7 Marques or Jackson. Do you know what that is?

8 A. Yeah, Marques and Jackson. Those are other
9 cases where I think we settled. Marques wanted to see
10 if we settled the wrongful death without the estate.
11 I didn't go back and look. I don't think that
12 applied. He actually died much after the incident.
13 Um, he died while we were in litigation of unrelated
14 issues. So, it really didn't matter here.

15 Uh, Jackson is a case where we sent
16 a demand letter for policy limits offering to settle
17 the wrongful death claim, not the estate claim. Uh,
18 it was accepted but through our negotiations after
19 acceptance, uh, the insurer asked us to open the
20 estate so we could settle all of it. I think we --
21 they had already tendered several million dollars in
22 that case.

23 Q. Okay. And is that at all related or similar
24 facts to this underlined letter?

25 A. No. I think it's, again, just sort of going

1 to the overall issues of whether you could settle
2 wrongful death cases without the estate claim, but
3 there are also situations where you settle the
4 wrongful death claim, and perhaps because the insurer
5 has acted reasonably and they are asking to open an
6 estate, we might do that as a courtesy to settle the
7 claim. It was not a requirement of the tender.

8 Q. Okay. And it looks like here it says Matt's
9 settlement conference. And what is that note in
10 reference to?

11 A. Yeah, I wanted to learn more about that
12 global settlement conference. So, I think this is
13 probably from a conversation that I did have with
14 Rich. He may have recommended that I look at the two
15 depositions to learn more about the settlement
16 conference, which I did.

17 Q. Okay. And did you find under here, it says
18 conditions to acceptance or conditions of performance.
19 Did you find any conditions in your review of the
20 matter?

21 A. Sure. The case of acceptance are, you know,
22 you must accept in writing within 30 days. Uh,
23 conditions of performance are things like you have to
24 send us payment by a certain date, uh, and you must
25 give us a release by a certain date, those kind of

1 dates.

2 So, I just, again, just kind of keep
3 notes to make sure that I was keeping my view
4 appropriate, and sort of limit it to what I was really
5 trying to do which is what is the appropriate way to
6 send a demand. Rory Chumley, one was to comply with
7 9-11-06.1.

8 Again, the conditions in this case
9 were met at this standard and straightforward not in
10 any way intending to trip up the insurer or trip them
11 into not accepting, or to, uh, make it so erroneous
12 that the acceptance would be difficult by the insurer.

13 Q. Okay. And on the same page, uh, it says I
14 don't see a disclosure of limits in writing. Um, is
15 that based on your review of the file?

16 A. Right. Fee demand, yes.

17 Q. Okay. And what does it say under that?

18 A. Uh, Shannon living apart from husband.
19 Shannon, I think that was Justice. I don't remember
20 what Shannon that was. I don't know why I wrote that.

21 Q. Okay. Do you recall how many individuals
22 died in this subject accident?

23 A. There were four, uh, in the Hartsfeld
24 vehicle. So, Shannon Hartsfeld, Nancy Evans, Andrew
25 Evans, and Mr. Willis. I believe those were the four

1 deaths in this incident, and then in the Justice
2 vehicle, I don't believe anyone perished. I think
3 there were just injuries.

4 Q. Okay. And at the bottom of this note, um,
5 and it looks like this is almost at the end, it says
6 there's a problem with St. Amand letter. What does
7 that say there?

8 A. It's not clear what amount they are offering
9 to Andrew. So, to the extent that Mr. Armand is
10 saying that this is a tender in response to the demand
11 letter sent by Rory Chumley relating to Andrew's
12 death, there's no clear delineation as to what amount
13 he is offering.

14 He is offering to allocate some
15 money between the different claimants, and it's my
16 experience when this typically happens, what they tend
17 to suggest is an equal split between the deaths. So,
18 I think here, I have \$50,000 divided by three, so
19 those would be the three death claimants aside from
20 Shannon Hartsfeld, who would be the at-fault driver.

21 The other three individuals of her
22 vehicle would be 16.6, which is what I suspect he was
23 trying to offer, or would have offered and probably
24 even less if he would have included the Justice
25 claims, so less than \$25,000. So, it's not a tender

1 of the policy limits in response to the Rory Chumley
2 letter.

3 Q. Okay. And just to be clear, your opinion in
4 this matter, uh, it does not relate to St. Amand or
5 his letter, correct?

6 A. Well, it does relate to -- if I'm a
7 reasonable plaintiff's attorney and I receive that
8 letter, how do I interpret it, and it's interpreted as
9 a counteroffer, it's not an acceptance. I think I do
10 write that in my report.

11 Q. Okay.

12 A. I did write that it was a counteroffer, and a
13 rejection. So, a reasonable plaintiff's attorney can
14 read that letter and interpret that letter of a
15 rejection of a counteroffer.

16 Q. Okay. And in connection with this matter,
17 had you retained any other subject matter other than
18 what we discussed here today?

19 A. My opinions are limited to what is in my
20 report.

21 Q. Okay. Are you familiar with Judge Eleanor
22 Ross?

23 A. I am.

24 Q. How do you know Judge Ross?

25 A. Judge Ross, uh, served as a state court judge

1 in DeKalb County at the same time I was there. We
2 overlapped for about two years.

3 I was there -- I was appointed in
4 2010 and, I believe, Judge Ross was appointed in
5 mid-2011. So, I was there eight months before she
6 was.

7 So, we served on the same court for
8 about two years before she was elevated to the Federal
9 District Court.

10 Q. Would you see her on a daily basis?

11 A. I don't know about daily but she was on my
12 same floor. Our offices were near each other.

13 Q. How far away were her chambers from where you
14 were located?

15 A. I believe she was next door. She was -- I
16 was at the very end. She was the very next door to
17 us. She was Division 5. I was Division 6.

18 Q. To your knowledge is Mr. Chumley the subject
19 of any legal malpractice proceedings at all, not
20 necessarily in regard to this matter but in general?

21 A. I have no knowledge of it.

22 Q. Okay. Do you know if he has been put on
23 notice of committing malpractice with regard to this
24 claim?

25 A. I am not aware of that. No. I don't believe

1 Mr. Chumley was deposed or has been deposed. I don't
2 think there were depositions nor have I ever spoken to
3 him.

4 Q. That was going to be the next question. Have
5 you ever spoken to him about this matter?

6 A. No. I have never spoken to him about
7 anything. I had never spoken to him. I don't know
8 Mr. Chumley.

9 Q. Did you ever speak with Christopher Evans in
10 this matter?

11 A. I have not.

12 Q. Have you ever spoken with Polina?

13 A. I have not.

14 Q. Have you ever spoken with Max Hirsch?

15 A. I know Mr. Hirsch but I have not spoken to
16 him about this matter.

17 Q. Do you know him as a colleague in the legal
18 community?

19 A. He appeared before me numerous times when I
20 was a judge.

21 Q. Okay. What framework did you utilize in
22 rendering your opinion?

23 A. I relied exclusively on my education,
24 experience, training, uh, and knowledge of the law in
25 Georgia.

1 Q. Okay.

2 A. And my experience as a plaintiff's attorney.

3 Q. Yeah, and how does your experience as a
4 plaintiff's attorney qualify you?

5 A. To gauge whether another plaintiff attorney
6 has acted appropriately?

7 Q. Yes.

8 A. Well, I feel that certainly given my
9 background and my training and my knowledge base,
10 having served as a judge for eleven years, interpreted
11 Georgia law for eleven years, and having served as a
12 plaintiff attorney on very significant matters, uh, in
13 the State of Georgia on a very high level of plaintiff
14 type work who deals with these issues daily, I feel
15 like I'm in a pretty good place to gauge whether the
16 law in like or similar circumstances acted
17 appropriately in sending demands in attempts to
18 maximize the recovery for his claimants.

19 Q. Okay. And how does, uh, being a former judge
20 qualify you as an expert in this matter?

21 A. Well, as a judge you're, you know, required
22 to have a strong understanding of Georgia Law. You
23 also are in a position where you have to interpret
24 Georgia statutes, and so, uh, in this case when I'm
25 looking at that type of matter, I'm looking to see if

1 it complied with Georgia Law, particularly 9-11-67.1

2 sending an appropriate policy limits demand, and I

3 believe that was complied with in this case.

4 Q. Okay. And I just want to be clear, you have

5 not served as an expert in any other matter, correct?

6 A. That's correct. Just matter that we

7 discussed.

8 Q. Just the fee matter. Other than that, no

9 other matters?

10 A. That's correct.

11 Q. And tell me more. You said that you're a

12 mediator, is that correct?

13 A. That's correct.

14 Q. And, uh, what entity do you serve as a

15 mediator for?

16 A. Uh, a company called Miles Mediation here in

17 Atlanta.

18 Q. And how long have you been a mediator with

19 Miles Mediation?

20 A. Uh, probably since early '22.

21 Q. Okay. And what types of cases do you

22 typically mediate?

23 A. So, I mediate sort of high dollar death and

24 catastrophic injury cases. Um, I'm mediating a

25 medical malpractice matter that resulted in a death.

1 I'm mediating product liability cases, premises cases.

2 Typically I also mediate a fair
3 number of cases where the, uh, plaintiff is Hispanic,
4 Spanish speaking. So, there are very few Spanish
5 speaking mediators in Georgia. My law partner is one
6 of them, Ted DelCampo. He is also a former judge.
7 So, we sort of got the market cornered on those types
8 of cases because there are not that many of us who do
9 that.

10 That's not exclusively what I do. I
11 also do, again, sort of high dollar deaths of
12 catastrophic injury cases.

13 Q. And what portion of your practice or your
14 day-to-day, I guess, how much mediation do you do
15 versus, uh, actually practicing law?

16 A. Yeah, I probably -- my mediation practice is
17 about 15 percent of what I do. So, I probably mediate
18 four cases a month. Um, I try to limit because I do
19 practice law full-time and I have a very active time
20 calendar. I tried several cases since I left the
21 bench.

22 So, I do limit the amount of time
23 that I mediate but I do sort of exclusively do sort
24 of, you know, high dollar cases. So, um, folks know
25 they can just text me. I don't usually open up my

1 calendar, but the lawyers who handle those kinds of
2 cases will text me and contact me to get me involved
3 with their cases.

4 Q. Okay.

5 A. And as I mentioned, my billing rate there is
6 \$1,100 an hour.

7 Q. Okay. But for this deposition of your
8 services here it's \$600 an hour, correct?

9 A. That's correct.

10 Q. Okay. And what did you perceive your role to
11 be in this case?

12 MR. DOLDER: Objection. Asked and
13 answered.

14 A. Again, just to engage the appropriateness of
15 the plaintiff attorney, Mr. Rory Chumley, uh, in how
16 he dealt with the demands and how he dealt with the
17 receipts of Mr. St. Amand's letter of September 6th,
18 uh, whether he was acting appropriately to maximize
19 and protect and preserve the interest of his clients.

20 Q. Okay. And your opinion is that he was acting
21 appropriately, correct?

22 A. That's correct.

23 Q. And is there anything else in connection with
24 your opinion that you have not stated today?

25 A. Uh, not that I'm aware of. All of my

1 opinions are listed in my report. So, we have now
2 discussed some of them. They are listed in my
3 report.

4 Q. So, you're not offering any opinions that are
5 not in the report in connection with this case,
6 correct?

7 A. That's correct.

8 Q. Okay. And there's no other materials that
9 you intend to rely on for your report or not
10 referenced or that you told me about today, correct?

11 A. That's correct.

12 Q. Have you ever been disciplined, uh, either in
13 your capacity as a judge or as an attorney?

14 A. I have not.

15 Q. Okay. Have you ever been the subject of a
16 bar complaint?

17 A. I have not. Um, yes. I think when I was a
18 young associate I did a pro bono matter, uh, where my
19 client may have sent in a bar complaint, but it was
20 immediately dismissed.

21 Q. Okay. And have you ever been the subject of
22 a malpractice complaint?

23 A. I have not.

24 Q. Okay. How about, you know, when I say
25 complaint, I also mean like a pre-suit, demand letter.

1 A. No.

2 Q. Okay. Other than, uh, your role as a former
3 judge, have you ever, uh, served in any other capacity
4 or run for public office?

5 A. No, just in my role as a judge.

6 Q. Have you ever been convicted of a crime?

7 A. I have not.

8 Q. Okay.

9 A. Hold on, in Georgia misdemeanors are traffic
10 offenses. So, in the most literal sense everybody who
11 has ever pled guilty to a misdemeanor traffic offense
12 has been convicted of a crime.

13 So, other than traffic offenses, I
14 have not.

15 Q. So none other than traffic offenses?

16 A. Correct.

17 Q. And currently do you perform any work for any
18 insurance companies?

19 A. I do not.

20 Q. Okay. And when was the last time you
21 performed work for an insurance company?

22 A. 2008, 2009, somewhere in that time frame.

23 Q. And was that like right before you, uh,
24 started your judgeship?

25 A. Right. I was -- I became a judge in the

1 middle 2010. So that would be the time.

2 Q. Okay. How often, uh, do you see Judge Ross?

3 A. I don't see her that often anymore. Um, I
4 probably haven't seen her since maybe the Christmas
5 season, you know, with all the lawyer parties. At
6 the Christmas parties you might run into some judges,
7 but we don't see each other at all.

8 Q. Okay.

9 MS. CRONAN: I don't have any other
10 questions. Thank you.

11 VIDEOGRAPHER: Off the record at
12 12:06.

13 (Witness excused.)

14 (Attorney Cronan and Attorney Dolder
15 both ordered copies of the transcript.)

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C E R T I F I C A T E

I do hereby certify that I am a Notary Public in good standing, that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony give by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this
30th day of July, 2024.

Tracey L. Alexander

Tracey L. Alexander

Notary Public

1 INSTRUCTIONS TO WITNESS

2

3 Please read your deposition over
4 carefully and make any necessary changes. You should
5 assign a reason in the appropriate column on the
6 errata sheet for any change made.

7 After making any changes which has
8 been noted on the following errata sheet, along with
9 the reason for the change, sign your name to the
10 errata sheet and date it.

11 You are signing it subject to the
12 changes you have made in the errata sheet, which will
13 be attached to the deposition. You must sign in the
14 space provided.

15 Return the original errata sheet to
16 the deposing attorney within thirty (30) days of
17 receipt of the transcript by you.

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ACKNOWLEDGMENT OF DEPONENT

I, _____, do hereby
certify that I have read the foregoing pages ___ to
___ and that the same is a correct transcription of
the answers given by me to the questions therein
propounded, except for the corrections or changes in
form or substance, if any, noted in the attached
Errata Sheet.

DATE _____

SIGNATURE

Subscribed and sworn to before me
this __ day of _____, 2024.

My commission expires:

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A			
ability 53:24 67:12 69:25 able 36:9 67:17 69:20 71:15,16 72:6 absent 25:15 absolutely 50:13,16 52:2,9 accept 23:3 24:3 62:10,16 62:24 74:22 acceptance 62:19 73:19 74:18,21 75:12 77:9 accepted 17:19,21,24 23:25 73:18 accepting 17:25 24:3 75:11 access 27:13 accident 49:17 75:22 accurate 46:19 ACKNOWLEDG... 91:1 act 33:17 48:4 53:9,22 acted 50:23 51:11,21 74:5 80:6,16 acting 70:4 83:18,20 action 1:3 22:14 29:20 87:14 actions 30:4,5 31:19 47:7 50:21 59:6 73:1 active 82:19 actively	36:18 38:7 actual 15:2 39:15 add 58:9,10 added 57:12 addendum 46:10,13,14,16,17,19 admit 70:17 ae 18:22 affidavit 40:5,7 41:1,17 54:23 affirmatively 65:8 aforesaid 87:4 agency 11:22,23 ago 9:22 11:5 34:22 61:3 61:4 agreed 6:2,10,17 23:3 ahead 22:10 65:22 al 1:7 7:14 10:9 Alexander 1:15 7:22 87:23 allegations 37:5 allocate 67:24 76:14 Allstate 15:9 16:17,22 63:2,6 Amand 13:25 14:25 15:4 67:23 68:5,8,24 76:6 77:4 Amand's 13:13 16:5 19:4 83:17 amended	52:5 amount 11:15 26:12,12 27:15 30:4 33:5,18 44:12 49:21 53:15 76:8,12 82:22 Andrew 14:4,23 17:6 18:4,5,9 18:12 49:13 75:24 76:9 Andrew's 76:11 answer 5:3 9:14 14:7 24:9 45:15 answered 83:13 answers 9:8 14:1 91:6 anticipate 36:21 anymore 86:3 anyway 54:5 apart 75:18 apartment 33:16 apologize 55:23 appeals 36:20 appearances 2:1 7:25 appeared 79:19 applied 73:12 appointed 78:3,4 appropriate 47:7 51:21 52:12 59:5 75:4,5 81:2 88:5 appropriately	50:23 51:12 80:6,17 83:18,21 appropriateness 83:14 approximately 10:16 32:21 35:15 40:25 42:11 44:22 April 42:6,14 arbitration 12:5 area 27:6 33:11 38:16 areas 25:14 33:8 38:18 arising 35:9 Armand 76:9 arrangement 44:5 articles 37:25 53:2 articulate 9:8 Ashe 31:13 32:3,12 34:25 35:2 aside 76:19 asked 23:11 24:5,12,15 26:6,15,16,24 27:11 27:19 41:11 43:1 45:12 59:7 65:18 73:19 83:12 asking 9:12 28:22 29:25 71:6 74:5 assets 63:16,23 assign 88:5 assigned 28:17 29:17 assignment

45:17 associate 32:17 33:3 84:18 Associates 2:8 14:3,22 15:5 17:12 47:17 Association 37:24 assume 9:1 assumes 22:20 assuming 18:23 50:3 assumption 48:12 Atlanta 1:2 2:10,19 10:10 81:17 attached 88:13 91:8 attain 25:9 26:1 28:9 71:16 attained 35:10 attempting 35:7 attempts 80:17 attend 23:11 25:19 26:23 28:1 71:6 attended 68:2 69:6,9,11 attention 13:3,5 attorney 7:5 8:24 9:10 28:24 38:21 39:3 40:13,19 43:11 45:13 47:2,5 47:12,14,21 48:2,7 48:16 50:12,16,25 51:11 52:19 54:9 58:23 59:1,3,6 67:2 73:1 77:7,13 80:2,4 80:5,12 83:15 84:13	86:14,14 88:16 attorneys 2:6,11,16,20 6:3,11 6:18 9:24 10:1,4,24 28:1 30:24 62:15 67:7 71:8 73:3 attorney's 47:13 at-fault 76:20 audience 27:22 28:3 augmented 58:1,2 August 10:18 14:3 authored 38:12 available 48:21 53:16 aware 44:2 45:22,25 51:18 54:15,18 65:25 66:9 66:12,17 70:8 78:25 83:25 a.m 1:15 7:7,18 22:6,10 55:6,10	28:11 38:2 54:14,17 84:16,19 base 58:20 80:9 based 39:4 46:9 50:11 58:22 61:24 75:15 basically 67:23 basis 32:1 39:3 43:6 52:19 78:10 beginning 47:5 begins 7:11 begun 6:16 behalf 8:3 12:1,2 23:4 24:4 41:25 51:13,14 70:5 believe 15:1,2 16:11,12 18:5 18:7,25 20:6,14,15 37:16 40:20 41:10 42:8 43:2 44:18 46:3,9 47:16 51:5 52:7,15 56:18 57:4 57:21 58:8,9 59:24 60:8,21 63:14 65:4 66:19 67:22 68:3,8 69:1 75:25 76:2 78:4,15,25 81:3 bench 28:19 60:1 82:21 best 49:25 beyond 54:19,24 big 33:3 biggest 36:16 bill 8:7 41:18 billed	41:15 billing 83:5 binder 13:21 14:18,20 16:2 16:6,9,10,14,15,19 20:18 57:14 binders 12:18 13:11,18,20 16:11,13 18:23,24 19:17,24 20:1,5 43:17 45:21 bit 13:17 25:17 33:21 38:18 blogs 38:9,12 bono 84:18 books 43:16 bottom 72:12 76:4 BOULEVARD 2:3 box 12:17 19:23,24,25 20:6 63:12 BPARKER@MO... 2:10 break 9:13,14,15,15 22:3 55:2 brief 26:8 briefly 9:3 BRUCE 2:13 BRUCE@HAGEN... 2:15 business 32:20 48:9
	<hr/> B		<hr/> C

87:1,1 calendar 82:20 83:1 called 10:9 31:4,13 41:12 42:8 81:16 Candace 2:3 8:3 21:7,23 capacity 9:21 12:3 35:3,6 84:13 85:3 car 33:19 care 70:17 carefully 88:4 Carisello(phonetic) 10:8 carrier 66:11 case 9:23 10:5,7,11,13,22 12:23 15:20 31:24 31:25 32:6 33:13 34:7,11,11 35:22 38:20,23 39:15 40:2 40:16,17,21,23 41:20,22,23 42:10 43:2,6,7,14 46:25 47:5,16 48:15,19 49:11,22 50:2,18,22 51:3,21 52:16 53:24 54:11,12,20 56:14 56:17 59:11,21 61:7 64:10 65:16,23,23 67:11,18 68:23 70:24 71:2,4,12,12 71:18,19,20 72:3 73:15,22 74:21 75:8 80:24 81:3 83:11 84:5 cases 29:17,23 31:25 32:7 32:11 33:4,6,10,14 33:19,19,20,24,24	34:2,20,23,24 35:11 35:18,18 36:7,14,16 36:24,25 37:19 59:4 59:8,22,25 64:15 70:18,24 71:3,10 72:1,7,14 73:3,9 74:2 81:21,24 82:1 82:1,3,8,12,18,20 82:24 83:2,3 catastrophic 33:9,22 71:14 81:24 82:12 CCRONAN@HIN... 2:5 center 33:16 certain 63:18 74:24,25 certainly 70:7 80:8 certainty 37:18 certification 29:1 certifications 28:21 Certified 1:16 certify 87:3 91:4 chambers 78:13 change 88:6,9 89:4 90:4 changed 46:1 changes 88:4,7,12 91:7 child 63:16,23 Chinese 11:8,10 Chris 49:12 Christmas 86:4,6	Christopher 1:7 2:11 8:8 18:13 54:13 79:9 Chumley 47:16,18,19,21 49:11 49:23 50:22 51:10 53:9,12,13 54:10,14 54:17 64:22 65:25 66:6,15 67:21 68:1 68:5 69:9 75:6 76:11 77:1 78:18 79:1,8 83:15 Chumley's 50:17 52:1 53:20 62:13 69:18 Cincinnati 34:18 CIRCLE 2:19 circuit 72:14 circumstance 73:2 circumstances 43:12 51:1 54:10 63:19 80:16 cited 59:21 civil 1:3 22:14 29:19,20 claim 18:3 47:6 49:9,17 50:7,8 64:1,17,20 65:11,11,12,17 69:24 72:16 73:4,17 73:17 74:2,4,7 78:24 claimant 39:17 67:4 claimants 35:12 38:23 47:3 48:1,3,18 49:7,10 50:9 51:19 53:10 67:1,8,15,25 69:21 71:17 76:15,19 80:18	claiming 41:7 claims 11:22 12:22 15:8,12 16:16,16 17:7 35:1 35:16,19 37:13 38:10,13 39:19,20 49:14,20,20 51:20 51:24 53:16 65:14 65:15 69:12 71:21 71:23,24 72:6,15 76:25 clarification 17:4,6,9 65:19 clarifications 17:12 clarify 23:1 28:23 class 31:19 classes 25:16 clear 21:17 52:11 61:6 76:8,12 77:3 81:4 cleared 58:2,3 clearly 9:8 clerk 11:6 28:14 clerked 11:7 28:10,12 clerkship 32:23 client 48:23 50:24 53:14 59:6 67:4,16 68:17 68:22 69:22,24 70:5 70:12 84:19 clients 12:2 34:18 35:8 49:25 53:21,23 69:20 83:19 client's 44:16
---	---	--	--

clock 50:7	14:2	38:15	47:22,23 54:17,24
close 18:20,20	complete 46:13	consideration 49:8	54:25 55:22 56:11
colleague 79:17	completely 21:18 22:1,2	consistent 53:6	56:12 58:19 60:6
College 26:13	complex 33:16	consult 59:13,17	61:18 62:5,8,11
column 88:5	complied 51:15 52:1,17 81:1,3	contact 42:5,7 83:2	63:3 70:21 77:5
come 26:6 44:7 70:12	comply 75:6	contacted 42:2	81:5,6,10,12,13
comes 29:2	composite 21:4 22:17	contemplate 54:6	83:8,9,21,22 84:6,7
coming 21:16	computer 19:16 22:2	context 32:10	84:10,11 85:16
commencing 1:14	computer-aided 87:11	contingency 32:1	87:12 91:5
commercial 48:9	conclusions 54:7	continuing 26:21	correction 55:16
commission 27:9,17,18 91:18	conditions 74:18,18,19,23 75:8	continuous 61:20	corrections 91:7
committing 78:23	conduct 50:17,22	control 70:8	correctly 62:9 69:8 87:9
common 39:2 59:11	conducted 6:20	conversation 74:13	correspondence 15:11 39:17
community 79:18	conference 6:21,24 67:24 68:2,7 68:10,12 69:3,7 71:7 74:9,12,16	conversations 68:17	counsel 4:7 6:22 7:24 12:7,13 17:3 53:12 87:13
companies 85:18	conferences 26:20,24,25 61:25 72:5	convicted 85:6,12	Counterclaim 14:8
company 1:4 7:13 8:4 14:9 34:14 37:9,12,15 62:20 64:14 71:4 81:16 85:21	confirm 60:4	copies 86:15	counteroffer 77:9,12,15
Company's 14:7	confirmed 7:4	copy 13:10 15:1,2 19:18 57:4,17	Country 15:9,14,18,23,25 16:17,24 17:2,15 65:16
compensated 30:15 41:9,10,19	confusion 63:5	Cornell 71:19	county 9:23 29:6,8,15 78:1
compensation 44:20	connection 19:6 20:20 37:22 42:2,24 56:14,17 60:5 77:16 83:23 84:5	cornered 82:7	couple 9:22 13:11 32:6,7 34:18 61:3,14
compilation 61:13	conscious 46:22	corporate 31:7	course 9:7
complaint 54:14 84:16,19,22,25	consider	correct 9:10 10:20 12:13 13:7 15:7 19:4,5,20 23:17 26:3 35:14 36:1 37:6 43:25 44:23 46:7,8,10	courses 26:18 28:25
Complaints			court 1:1 6:21 7:15,22 8:9 9:5,19 11:1 26:20 28:16 29:14,16,18 30:1,8 77:25 78:7,9
			courtesy 74:6
			cover 16:5,8 39:21 51:20

coverage 15:19	date 21:1 44:20 55:12	decipher 60:16	demands 12:21 15:21 16:4
co-counsel 10:23	60:10 74:24,25	decision 46:22	39:15,16 52:12
CPLR 6:19	88:10 91:10	declaration 41:1	53:18,18 59:10
create 63:13 64:1	dated 14:3	defendant 2:11,16,20 8:8 11:3	62:22,22 64:9,10,14
created 25:4 65:9,21	dates 15:1 24:25 25:1	11:19 14:8 34:8,10	67:8,13 71:8,16
credits 26:21,22,23	61:16 75:1	36:10	72:5 80:17 83:16
crime 85:6,12	Dax 1:12 3:3 7:2,12 8:11	Defendants 1:8 27:5	Denissova 1:7 2:16 18:21
criminal 29:18 33:17	8:20 55:14 56:1	DEFENDANT'S 4:9	dental 40:20
critical 48:23	day 26:12 68:16,25 72:19	defended 34:12	deplete 49:7
Cronan 2:3 3:7 8:2,3,17	87:18 91:16	defense 31:22,23 32:2,4,5	depleted 53:19
20:23 21:2,8,12,18	days 50:8 52:13 74:22	34:2,4 37:10 38:5,5	deponent 87:6,9 91:1
21:22 22:1,11,22,25	88:16	definitely 38:24 39:5	deposed 41:21 79:1,1
23:7 55:2,13,20,24	day-to-day 82:14	degree 25:10	deposing 88:16
56:3 60:7,11 86:9	deadline 68:16	DeKalb 9:23 29:8,14 78:1	deposition 1:12 5:1 6:6,13,20
86:14	deal 27:7,12 35:4 36:13	delay 67:12	7:1,9,12,18 8:21 9:2
CROSS-EXAMIN... 3:9	dealing 72:3	DelCampo 29:4,10 30:12,18	9:16 12:8,16 13:12
Culbertson 2:2 7:20	deals 36:4 80:14	33:7 82:6	13:13 16:19 19:8,10
current 30:11 33:7 35:3,16	dealt 83:16,16	deleted 58:10	20:20 21:5 22:14,16
currently 29:3 35:8 85:17	death 14:4 18:8,9 29:21	deletion 57:11	23:11,13 24:13 45:9
customary 53:6	30:4 33:9,22 49:14	delineation 76:12	83:7 87:11 88:3,13
	49:17 51:13,15	demand 13:2 14:2,21,21 15:4	depositions 12:19 13:11 16:12
	63:15 64:1 65:11,11	15:11,25 17:1,17,23	18:25 19:1,2 68:4
	65:14,17,22 71:20	17:25 36:9 48:16,22	69:8 74:15 79:2
	71:22 72:6 73:3,10	49:24 50:5 51:12,14	DESCRIPTION 4:3,9
	73:17 74:2,4 76:12	62:14,16 64:18 66:1	designed 62:9,24 64:13
	76:19 81:23,25	67:5,21 68:20 69:19	Desiva(phonetic) 18:18
d 2:21 6:20	deaths 48:20 71:13 76:1,17	71:5 72:17,17 73:16	details 41:6
daily 43:3 73:5 78:10,11	82:11	75:6,16 76:10 81:2	determined 63:7
damages 30:4 48:2,20	DECATUR 2:14	84:25	developing 54:6
Daren 40:19	decided 10:22 46:20		died

73:12,13 75:22 different 61:16 67:25 68:17 76:15 difficult 62:9,16,24 75:12 direct 1:3 3:6 7:13 8:3,15 13:2 14:5,7,9 19:11 23:24 26:5 37:14 53:17 66:12 67:20 68:15 Direction 5:3 Directly 37:10 discernable 65:7 disciplined 84:12 disclosure 66:5,8 75:14 disclosures 14:5,8,10 discovery 12:23 14:6 65:6 discuss 42:9 discussed 16:4 24:2 43:8,8 77:18 81:7 84:2 discussing 13:15 43:10 discussion 24:11 dismissed 84:20 dispute 64:16 disputes 35:4 distinction 37:4 distributions 30:16 District	1:1,1 7:15,15 28:16 78:9 divided 18:10 76:18 Division 1:2 78:17,17 doctor 34:9 doctorate 25:8 document 12:25 13:9 16:15 20:22 21:9 23:14,16 56:4 documents 5:9 12:18 13:1,4,6 14:17,19 15:6 16:18 16:21,24 20:7,9,12 24:13,24 45:4,15,17 46:18 55:3 62:2,4 66:16,19 doing 32:3 Dolder 2:18 3:11 8:5,5 12:9 12:17 13:15 21:10 21:23 22:19,23 23:1 23:3,5,10,25 24:7 24:13 41:25 42:4,16 42:19 43:20 44:5,13 44:16 45:21 46:15 51:4 53:8 55:3,4 56:25 57:4,18,20 58:12,14 59:23 60:22 61:25 83:12 86:14 Dolder's 44:19 57:3 dollar 40:22 81:23 82:11,24 dollars 18:9 71:24 73:21 door 78:15,16 draft 27:10 56:16 57:4,5,7	57:21,22,25 59:24 drafting 61:12 drafts 56:19,20 drawing 37:4 DRIVE 2:9 driver 76:20 dropped 43:16 65:5 duces 20:19 duly 8:12 87:7 Dunwoody 29:5,6 duty 49:23 <hr/> E <hr/> E 87:1,1 89:2 90:2 earlier 60:3 early 81:20 EAST 2:3 edited 57:5,9 58:1 editing 57:10 edits 56:21 education 25:7 26:22 39:4 58:23 79:23 effective 48:24 eight 45:8 71:17 78:5 either 21:11 57:10 84:12	Eleanor 77:21 electronic 19:18 elevated 78:8 eleven 38:6 52:21 56:11 80:10,11 emergency 61:8 employed 29:3,9,12 31:3,12 32:13,22 37:8,11 employee 30:12 employees 19:11 employment 25:18 30:11 31:18,19 32:9,19 34:8 encompass 33:10 encounter 39:3 enforcement 52:22 engage 83:14 engaged 39:25 69:22 70:8 engagements 27:2,21 English 27:6,13 ensure 53:22 enter 22:12,17 60:7 entire 19:13 56:13 entirety 24:19 53:20 entity 81:14 entrusted
--	---	---	--

52:22	1:7 2:11 8:8 14:4,23	exist	33:5,18 82:2
equal	14:23 17:6 18:4,5,6	68:20	fairly
76:17	18:8,9,12,13 49:12	existed	70:19
equally	49:12,13,14 51:11	52:4,5	faith
18:10	51:13,15 54:13	existence	34:25 35:4,9,17 36:2
equitable	75:24,25 79:9	31:5,14	36:4,8,11,15,19,22
29:25 30:10	eventually	expended	36:24 37:1,5,6 59:8
equity	65:4	41:5 44:25 45:7	59:9 68:21
29:24 30:1	everybody	experience	falls
Eric	85:10	11:8 26:4,5 33:2 39:5	34:20
8:20	everyday	50:11 52:18 58:22	familiar
errata	59:4,5	76:16 79:24 80:2,3	9:2,10 15:13 42:20
88:6,8,10,12,15 91:9	evidence	experienced	43:1 54:2 59:5,9,25
erroneous	10:24 22:21 26:9	48:7	77:21
75:11	exactly	expert	family
especially	50:24	4:5 12:10 38:16,25	30:6,9
63:23	examination	39:8,23,25 40:8,10	far
ESQ	3:6 6:16 8:15	43:9,21,24 44:3	48:20 78:13
2:3,8,13,18	examined	51:6,7 55:14 56:7	fashion
Esquire	6:14 8:12	80:20 81:5	51:21
1:13 7:12 56:1	exceed	experts	father
essentially	48:21	39:12 54:1	49:13
9:25	Excellent	expires	federal
establish	9:18	91:18	11:6,7 28:16 78:8
64:25 65:3	excess	explain	fee
established	36:12	68:22	10:19,20 44:4 75:16
65:5	excessive	exposure	81:8
establishing	44:11	36:12 68:21	feel
64:23	exclusively	extent	15:20 80:8,14
estate	30:7 79:23 82:10,23	76:9	fees
7:14 17:7 30:6,10	Excuse	e-mail	9:24 10:1,4,24 39:25
31:6 63:10,13,15,18	50:15	20:13,15	40:1,5,7 41:3,6
63:21,22,25 64:2,17	excused		felonies
64:19,20,24 65:1,3	86:13		29:19
65:4,9,12,15,19,20	EXECUTIVE		felt
65:23 67:11 71:21	2:9	F	44:10
71:22 72:6,14,16	exhaust	87:1	field
73:4,10,17,20 74:2	67:15	face	39:13
74:6	exhausted	42:19,19	file
estates	67:3	faced	1:3 15:15,18 19:13
65:18 67:11	exhibit	54:11	39:19 66:4,7 67:20
et	4:3,4,5,6,9 20:24,25	facts	75:15
1:7 7:14 10:8	21:3,4 22:13,18	22:21,22 73:24	filed
ethics	55:11,25 60:8,9	factual	11:12,13,22 30:5
27:16,20	exhibits	43:6	54:14
Evans	4:1,10 12:20 56:11	fair	files
		26:12,12 27:15 29:22	

12:22 15:8 16:17,22 19:19,22 39:20 financial 15:9,15,18,23,25 16:17,24 17:2,16 31:25 65:16 find 74:17,19 finish 49:1 finished 9:22 firm 17:24 31:4,13,17,21 33:3,5,6 34:25 35:22 37:3 42:21 44:19 firms 31:15 37:11 first 8:11,23 42:18,21 48:25 50:6,10 57:7 57:21,22 61:2 63:14 63:14 69:19 five 71:13,14 FL 2:4 floor 78:12 focus 15:21 17:14 34:22 38:20 focused 13:3,5 14:20 15:7 16:23 25:17 27:6 69:12 folks 82:24 follow 38:9 following 88:8 follows 8:13 Foltz	31:4,21 34:17 food 11:12 foregoing 91:4 form 6:7 22:20 24:7 51:4 53:8 91:8 former 41:12 58:24 59:1 80:19 82:6 85:2 formulating 59:14 FORT 2:4 forth 17:11 four 11:14 16:11 18:23 19:23 20:5 23:18 55:18,18,20 58:15 58:17 60:3 61:15,21 75:23,25 82:18 frame 85:22 framework 79:21 frequently 70:14 friend 11:13 front 16:3,8,8 60:15 frozen 21:13,14,19,22 full 8:19 12:17 fully 36:21 full-time 38:8 82:19 Fulton 43:3 <hr/> G <hr/> GA	2:10,14,19 gap 61:11 gauge 80:5,15 GEICO 15:9 16:17 63:2,6,7 general 1:3 7:13 8:3 13:2 14:7,9 23:24 28:25 37:15 53:17 66:13 67:20 68:16 78:20 generally 39:13 General's 19:11 Georgia 1:1 7:16 26:8,13,19 27:9,11,17,18 28:8 29:5,6 37:23 48:11 49:6 62:14 65:10 79:25 80:11,13,22 80:24 81:1 82:5 85:9 getting 36:14 48:22 51:22 give 9:25 52:12 60:17 74:25 87:12 given 24:6,10 45:10,16 80:8 91:6 giving 10:4 Glenda 69:10 global 67:24 68:2 69:3,6 71:6 72:4 74:12 go 9:3 22:10 30:1 37:6 42:9 73:11 goes 64:12 going 9:3,5 20:23 21:3,4	22:12,19 25:5 30:11 45:11 46:4 48:16 60:7 62:4 63:25 64:25 66:21 67:2 68:15 70:5 73:25 79:4 good 8:2,18 20:2 31:24 44:18 60:18 80:15 87:4 government 32:19 governmental 11:23 graduate 25:12,16,22 graduated 28:10 granted 52:15 Grayson 29:4,10 30:12,18 33:8 great 9:17 27:7 guess 16:6 28:13 36:3 40:25 60:24 82:14 guest 26:11 guilty 85:11 <hr/> H <hr/> Hagen 2:13,13 3:12 43:3 68:4 69:9 Hagen's 13:12 19:4 hand 87:17 handle 27:4 29:22 34:23 39:6 83:1 handled 33:13 34:19 36:24
---	---	---	--

handles 29:18	25:6,6	image 21:24	25:2 57:5 59:24 65:18
handling 31:22 35:11	Hill 31:14 32:3,12	immediately 84:20	injured 33:15 49:19
handwritten 4:6 55:21 60:2	Hinshaw 2:2 7:19	impacted 54:5	injuries 33:22 71:14 76:3
happened 15:24 24:9 43:6 65:16 70:19	hire 70:12	impressions 25:2	injury 33:10 35:21,22 81:24 82:12
happens 65:12,24 70:3,14 73:5 76:16	hiring 7:4	incident 73:12 76:1	input 46:16 57:19,19
happy 9:15 23:18	Hirsch 2:21 8:6 14:5 42:1 44:15 54:1 79:14,15	included 76:24	instance 40:6,8 53:11
Hard 24:8	Hirsch's 14:1	includes 13:24 45:3,3	INSTRUCTIONS 88:1
Hartsfeld 75:23,24 76:20	Hispanic 82:3	including 12:18 56:11	insufficient 38:24 47:3 50:2,3,4 51:20 63:21 67:1
head 9:8 18:16 37:19 40:15,23 69:4,6 70:19	hold 28:4 34:7 85:9	incorrect 23:6	insurance 1:3 7:13 8:4 14:7,9 17:16 34:14,18 35:4 35:16,19,24 36:1 37:9,10,12,15 38:9 38:10,13,13 39:20 39:21 47:10 48:21 49:21 62:20 64:14 71:4 85:18,21
headlines 43:4	holding 31:16	increased 50:10	insure 72:17
hear 21:23	Holland 32:14,15,17,22,25	incredibly 48:1	insurer 15:15,22,23 50:6 67:14 73:19 74:4 75:10,12
hearing 9:19 10:19,20 11:1 40:2 41:22	hope 15:21 59:10,10,11	incurred 40:24	insurers 49:6
heavy 33:4	hopefully 55:18	INDEX 3:1 4:1 5:1	intend 84:9
Hector 28:18	hopes 51:23	indicate 66:9	intending 75:10
help 27:10	hour 41:17 44:6,10 83:6,8	indicated 87:6	intentionally 62:20
helped 56:25	hourly 41:3 44:7	individuals 27:12 33:15 48:14 49:18 75:21 76:21	interaction 16:25
helps 21:21	hours 41:5,7 44:22,25 45:8	infamous 62:15	interest 25:18 83:19
hereto 6:4,12	husband 75:18	information 10:1 16:16 17:13 52:14	interested
he'll 12:10	<hr/> I <hr/>	informed 43:5 65:21 66:11	
high 80:13 81:23 82:11,24	idea 60:18	ingest 11:12	
highest	identification 21:1 55:12 60:10	ingested 11:11	
	identity 7:3	initial 14:4,8,10 17:17,25	
	ignore 72:17		

87:14 internal 47:10 interpret 77:8,14 80:23 interpretation 52:23 interpreted 77:8 80:10 interpreter 27:4 interpreters 27:4,9,10 interpreting 59:10 intervene 59:8 invoices 45:6 involve 34:25 35:19 48:20 involved 37:14,18 48:14 49:8 51:19 83:2 involvement 41:23 42:9 43:9 issue 12:21 13:2 23:25 27:14 29:24 39:19 49:21 50:17,22 64:19 issues 27:4,5,12,19 36:13 38:10,13 41:12 51:2 59:8,11 70:25 72:2 73:14 74:1 80:14	28:17 29:14,16 38:6 41:12 52:21 58:24 59:1,7,9,12 77:21 77:24,25,25 78:4 79:20 80:10,19,21 82:6 84:13 85:3,5 85:25 86:2 judgements 14:1 judges 26:19,20,23 27:18,22 28:3 86:6 judgeship 31:2 85:24 judging 38:19 judicial 26:13 27:16,16,19,20 28:2 July 1:14 7:6,17 87:18 June 61:10 Juris 25:8 jurisdiction 30:6 jurors 10:1,21 justice 15:16 27:14 49:19 75:19 76:1,24 Justices 53:19 Justice's 15:23	kind 48:13 50:2 52:14 62:3 74:25 75:2 kinds 59:4 83:1 knew 66:7 Knight 32:14,16,17,22 33:1 know 13:8 17:9,18,21 18:3 18:14,14,16,18 21:12 23:24 24:9 26:10 33:15 35:21 36:10 40:22 41:11 41:16 42:23 43:3 47:12,18 48:3,6,20 49:10,18 50:3,21 51:2 53:17,25 54:9 54:11,13 61:1,22 62:14,18 63:11 65:2 65:8,25 66:6,11 68:1,13,24 69:2,6 70:4 72:3 73:7 74:21 75:20 77:24 78:11,22 79:7,15,17 80:21 82:24,24 84:24 86:5 knowledge 39:5 54:16 58:22 66:20 67:19 78:18 78:21 79:24 80:9 knows 48:7 49:16 K1 30:16,18	largest 34:19 LAS 2:3 late 10:18 61:7 69:22 70:12,12 LAUDERDALE 2:4 law 11:6 25:8,9,11,18 26:7,7,11 28:5,6,13 28:14 29:23 30:7,9 30:10,22 32:19 33:11 38:1,7,19 48:11 59:9,21 65:10 79:24 80:11,16,22 81:1 82:5,15,19 lawsuit 11:13 lawyer 38:8 86:5 lawyers 37:24 83:1 LAWYER'S 92:1 lead 13:1 leading 43:7 learn 74:11,15 leave 32:25 leaving 53:20 69:24 lecturing 26:11 left 31:15 55:17 62:7 82:20 legal 1:21 7:21,23 10:12 25:15 27:5,12 43:3 51:2 78:19 79:17 legally
J	K	L	
Jackson 73:7,8,15 jot 24:25 jotted 62:3 judge 11:7 26:6,14,16	keep 19:24 75:2 keeping 75:3 kept 19:19 61:2,22 kin 87:13	L 1:15 6:1 87:23 labeled 16:7,14 Laffitte 28:18 large 29:20 30:4 33:13,20	

31:16	53:17 63:20,21 66:1	longer	32:2
letter	66:5,10,12,18,22	28:19 31:5,16	making
13:25 14:2,21,25	67:1,3,15,25 69:14	look	12:10 88:7
15:3 16:5 17:2,25	69:20,24 70:16 71:5	18:1 62:6 72:18	malpractice
36:10 48:16,22	71:13,15 73:16	73:11 74:14	10:11,12 29:21 33:19
49:24 50:10 51:12	75:14 77:1 81:2	looking	40:21 78:19,23
53:12 63:2,2 65:9	line	18:14 57:14,14,15	81:25 84:22
66:3,8 67:22 68:20	5:4,4,10,16,16,23,23	63:4 80:25,25	manuals
68:24 70:10,13 71:4	57:11 89:4 90:4	looks	59:13
73:16,24 76:6,11	92:2	24:18 56:10 58:16,16	manufacturer
77:2,5,8,14,14	lines	64:3,6 72:9 73:6	33:14
83:17 84:25	64:4	74:8 76:5	margin
letters	list	Lopez	62:7 71:3
14:22 15:4,11,25	13:8 46:17,21	1:12 3:3 7:2,12 8:11	mark
16:1 17:3,11,13	listed	8:18,20 22:12 23:9	55:13
51:22 52:1,11 62:14	13:6 71:3 84:1,2	29:4,10 30:13 33:8	marked
62:14,16 63:6 66:1	literal	55:14 56:1,5	4:10 5:22 20:25
67:21 70:9	85:10	lose	55:11 60:9
let's	litigating	70:6,15	market
64:16	36:8	losing	82:7
level	litigation	72:4	Marques
25:6 80:13	11:4,20 19:7,14 31:7	lost	73:7,8,9
liability	31:8,18,20 32:18,20	69:16,17	Marr
15:15,22 29:21 32:19	35:13 36:8,15,22	lot	10:9
33:13,14 38:3 52:16	37:1,17 38:2 64:21	12:20 13:10 16:16,23	Martin
82:1	73:13	33:4,24,24 41:12	31:4,21 34:17
license	little	56:20 58:7,8	material
28:5,7,9,13	13:17 25:17 33:21	Louis	52:17
licenses	38:17	49:17 53:18	materials
28:4	living	luck	39:12 45:19,23 46:1
likelihood	75:18	67:17	84:8
50:8	LLP	lunch	Matt
limit	7:20	42:9,10,12	13:12 19:4 69:9
53:15,20 75:4 82:18	loaded		matter
82:22	36:6	M	7:13 11:18 12:19,20
limitations	located	machine	13:21 19:9,21 24:20
45:11	29:7 78:14	87:9	34:8 39:9,10,24
limited	location	magazine	40:8,11,12 41:9,24
27:22 41:23 43:9,10	1:13	37:25	42:3,25 43:24 45:23
45:14 47:4,9,11	locations	Magna	52:20 53:3,19 54:1
52:16 54:8 77:19	6:23	1:21 7:21,23	54:7 56:8 59:2 60:5
limits	locked	maintain	73:14 74:20 77:4,16
17:16 18:1 38:24	22:2	19:22	77:17 78:20 79:5,10
47:3 48:4,8,18,22	long	major	79:16 80:20,25 81:5
49:3,4 50:3,4,9	29:9 34:22 58:11	25:24	81:6,8,25 84:18
51:20 52:12 53:13	67:11 69:2 81:18	majority	matters

25:6 29:19 30:7 33:20 35:4,9,17 36:3,5 80:12 81:9 Matt's 74:8 Max 2:21 8:6 41:25 44:15 79:14 maximize 50:1 80:18 83:18 maximizing 51:23 ma'am 24:21 MCDONOUGH 2:14 mean 16:7 23:10 24:10 25:17 27:25 43:8 45:12,16 57:6 62:12 68:14 84:25 meaning 64:9 68:21 69:17 70:8 means 36:9 mediate 44:9 81:22,23 82:2 82:17,23 mediating 81:24 82:1 mediation 81:16,19 82:14,16 mediator 44:9 81:12,15,18 mediators 82:5 medical 10:14 29:20 33:18 61:8 63:24 81:25 member 27:8,9 37:23 38:2 memory 34:21 mentioned 19:2 24:1 83:5	met 42:18,20 47:19 75:9 methodology 58:20 Metropolitan 10:10 Michael 13:12 19:4 middle 86:1 mid-2011 78:5 Miguel 2:24 7:21 Miles 81:16,19 million 40:21 73:21 millions 71:24 mind 18:13 29:2 mine 11:13 minimum 48:12 misdemeanor 29:18 85:11 misdemeanors 85:9 missed 68:16 Mitchell 69:11 Moltry(phonetic) 71:12 mom 63:8 money 53:16 76:15 month 10:16 82:18 months 11:14 61:14 78:5 Montlick 2:8 14:3,22 15:5 17:2	17:12,23 47:17 morning 8:2,18 24:15 mother 51:13 61:7 63:1 multiple 47:3 66:25 M-A-R-R 10:9 <hr/> N <hr/> N 6:1 name 8:19 10:6 18:17 28:18 40:17 88:9 Nancy 14:23 18:6,8 49:13 75:24 NE 2:19 near 78:12 necessarily 28:24 78:20 necessary 88:4 need 9:7,13,15 25:16 63:22 65:12 needed 14:14 20:10 32:20 46:12 57:10 58:2,3 negotiations 73:18 neither 87:13 never 23:12,13,14,15,19,20 24:3,11 37:11,18 40:1 41:21 47:19 66:14 79:6,7 Nicholas 10:8 nods 9:9	nominal 11:15 normal 64:8,9,16 NORTH 2:14 Northern 1:1 7:15 Notary 1:15 6:14,15 87:4,24 91:23 note 61:2,23 62:7 64:13 70:2,20 71:25 72:18 74:9 76:4 noted 62:21 88:8 91:8 notes 4:6 24:15,17,19,22 55:17 60:2,4,8,13 60:25 61:12,24 62:3 63:9 64:3 75:3 92:1 notice 21:4,5 22:15 23:13 78:23 87:5 number 7:11 17:10 29:22 36:25 57:24 82:3 numbered 64:4 numerous 17:10 26:8,15 38:18 38:23 48:1 49:20 79:19 <hr/> O <hr/> O 6:1 oath 9:5 10:3 object 22:19 24:7 53:8 Objection 51:4 83:12 objections 6:7 12:10
---	--	---	--

obtain 41:5 53:13	22:22,25,25 23:8,14 23:18,21,24 24:5,12	45:13 47:1,10	5:16,23,23 58:18
obtained 40:21 56:23	24:17,19,22 25:5,9 25:12,14,19 26:1,4	opining 41:2	61:3 62:6 66:21,23
Obviously 12:1	27:1,21,24 28:4,6,9 28:14,17,20 29:3,6	opinion 13:1 45:18 46:1 47:9	72:9 75:13 89:4
occasion 40:1	29:9,12,16 30:11,18 30:21,24 31:2,11,21	47:24,25 50:20,23 51:6,7,10,25 54:5,8	90:4 92:2
occasional 32:6	32:12,15,21,25 33:7 34:1,4,6,13,24 35:3	68:13 69:13 72:24 72:25 77:3 79:22	pages 23:18 24:17,18 55:17
occasions 13:15	35:6,11,15,20,25 36:2,18,23,23 37:4	83:20,24	55:18,19,21 56:11
occurred 42:12	37:8,13,21 38:4,9 38:12,15 39:12,23	opinions 39:13 52:20 54:7,21	57:23 58:15 60:3
OCGA 52:1 59:19	40:4,6 41:8 42:2,11 42:24 43:13,18,20	58:21 72:21 77:19 84:1,4	61:15,21 91:4
offense 85:11	43:23 44:1,17,22,25 45:5,10,22,25 46:6	opportunity 67:4	paid 45:6
offenses 85:10,13,15	47:20 50:11,14,17 51:2,7,25 52:3,7,18	opposed 69:21	pain 65:7
offer 62:17 76:23	52:24 53:5,25 54:4 54:6,16,19,23 55:1	option 68:23	paper 19:18,19,22 57:17
offered 76:23	56:7,10,13,16,22 57:2,13,16,16 58:11	options 68:19	parents 17:5 18:10,12
offering 54:20 73:16 76:8,13 76:14 84:4	58:25 59:13,16,20 59:22 60:12,12,24	order 14:6 49:25	PARK 2:9
offers 52:8	61:5,15,19 62:6,25 63:9 64:3,22 65:2	ordered 86:15	Parker 2:8 3:10 8:7,7
office 19:15 85:4	66:21 67:19 68:1 69:2,5,14 70:1,20	ordinary 64:11	part 10:21 27:23,24 31:8
offices 78:12	71:25 72:9 73:6,23 74:8,17 75:13,17,21	original 14:2 88:15	48:25 57:2 69:12
official 87:17	76:4 77:3,11,16,21 78:22 79:21 80:1,19	outcome 87:15	72:17
oh 18:21 64:16 72:12	81:4,21 83:4,7,10 83:20 84:8,15,21,24	outstanding 45:6	participate 68:6,12 69:10
okay 8:24 9:1 10:6,12,15 10:25 11:25 12:4,7 12:12,15 13:5,17 14:17 15:6 16:2,10 16:18,21 17:18,21 18:12 19:6,10,13,16 19:19 20:5,9,12,16 20:19,22 21:3,22	85:2,8,20 86:2,8	overall 72:21,23,25 74:1	participated 12:4
	OLAS 2:3	overlapped 78:2	participating 6:24 68:9
	ones 15:7 37:5	<hr/> P <hr/>	particular 16:7 39:21 48:19
	ongoing 11:14	P 6:1	72:1
	open 73:19 74:5 82:25	pad 61:2,23	particularly 26:19 50:1 81:1
	opine	page 3:6 4:3,9 5:4,4,10,16	parties 6:4,12,19 7:24 15:12
			71:6 86:5,6
			partner 29:4,10 82:5
			partners 30:19,21 42:21
			party 12:5 87:14
			pass

28:11	pick	66:13,17 67:15	14:5 25:5
pattern	61:9	69:20,23 73:16 77:1	premises
31:15	picked	81:2	33:14 34:20 82:1
pause	61:22	Polina	preparation
22:7 55:7	place	1:7 2:16 18:21 63:8	45:8
pay	69:3 80:15 87:6	79:12	prepare
53:16	placed	Polina(phonetic)	12:15 60:22
paying	20:17	18:19	prepared
44:17	plaintiff	Political	24:22,24 46:14 54:20
payment	1:5 2:6 11:3,19 14:7	25:25	56:1,16 57:24 60:25
74:24	14:9 31:22 32:4,6	portion	61:16
payout	34:1,3 35:7 47:14	9:23,25 10:22 37:1	preparing
49:7	48:7 80:5,12,13	47:5 57:19 60:25	13:15 45:1
pending	82:3 83:15	65:22 71:20,23	present
36:18	plaintiffs	82:13	2:23 7:25 8:5 9:7
people	32:7,10 71:8 73:1,2	portions	12:9
41:13	plaintiff's	57:10 58:1	preserve
perceive	4:2 31:24 32:1 38:1,5	position	83:19
46:24 83:10	38:8,21 39:2 40:13	32:15 33:7 49:25	pretty
percent	40:19 43:11 45:13	69:18 80:23	29:20 44:10 62:22,23
37:17 82:17	47:2,12,21 48:2,15	possible	64:10 80:15
percentage	50:15,25 52:19 54:9	48:17,23 67:9	previous
35:15 36:3,4	58:23,25 59:3 67:2	possibly	64:12
perform	77:7,13 80:2,4	49:24 51:17	pre-death
52:25 85:17	plan	posture	63:24 65:7
performance	14:6	36:11,17 40:3	pre-demand
74:18,23	pleadings	potential	66:5,8
performed	12:19 13:21,22 14:12	15:22 36:7 42:9 43:9	pre-suit
19:7 85:21	14:13,14 16:9 18:15	47:6 51:23	84:25
period	39:15	potentially	primarily
68:25	please	50:9 53:10,11	27:3
perished	8:18 9:13 51:8 88:3	powers	primary
49:17 76:2	pled	30:2	28:3 33:8 34:22
permission	85:11	practice	41:13
24:3,6,10	plus	30:22 33:8 34:9	printed
permits	41:4 45:9	35:16 36:4 38:1,19	20:17
49:6	point	53:6 61:8 82:13,16	prior
personal	36:11,12 47:8 48:5,6	82:19	29:12 31:2
12:1,2,13 35:21,21	64:18 68:18,19	practices	pro
48:10	points	47:10	84:18
personally	17:10	practicing	proactive
23:2 47:18 69:17	policies	8:24 38:7 50:12,15	71:5
peruse	39:21 63:1	82:15	proactively
13:10	policy	precise	70:21
phase	18:1,7 36:12 52:12	52:19	probably
9:24 10:24	53:20 66:1,5,10,12	preliminary	9:2 14:20 20:2 23:5

24:10 34:17,19 36:15 41:18 42:6,14 43:16 44:18 45:2,7 45:7 48:8 60:17 61:3,7,9,11,13 63:22 70:17 74:13 76:23 81:20 82:16 82:17 86:4 problem 76:6 procedures 47:11 proceeding 22:8 54:17 55:8 proceedings 78:19 process 23:3 36:20 procrastinate 70:10 produced 20:13 product 33:13 38:3 82:1 production 5:9 16:15 products 29:21 32:18 professional 28:4,20 37:21 professionalism 26:9 profits 30:17 propounded 91:7 protect 83:19 protected 53:23 provide 24:12 52:13 provided 12:17,25 13:9 14:15 15:10 19:23,25 20:6 20:7 24:16 43:14	45:21,23 46:18 57:18,21,25 59:22 59:25 60:2 88:14 prudent 38:21 43:11 47:1 50:25 67:1 public 1:15 6:14,15 85:4 87:4,24 91:23 publications 37:22 published 53:2 Puerto 11:6 28:16 purpose 43:10 70:1 purposes 12:8 pursuant 6:19 56:1 87:5 pursue 64:20 purview 51:5 put 10:23 49:25 78:22 p.m 60:20 <hr/> Q <hr/> qualification 27:19 Qualifications 27:17 qualify 59:1 80:4,20 question 6:8 9:13,14 20:2 22:20 36:6 38:17 44:18 45:15 50:19 79:4 questions 5:22 17:4 39:20 65:18,19 86:10 91:6 quickly	48:4,17,22 49:24 51:17,22 53:9,22 67:9 quoted 41:16 <hr/> R <hr/> R 87:1 89:2,2 90:2,2 race 48:4,17 49:1,3,4 63:20 66:22 67:6 69:14 70:15 71:13 72:4 races 69:16,17 racing 48:13 Rafuse 31:13 rate 41:3 44:8 83:5 read 43:2 52:11 63:10 64:8 72:10 77:14 88:3 91:4 reading 6:5 7:8 62:8 reads 62:10 real 30:6,10 31:6 72:14 realistically 15:14 realized 65:6 really 15:20 21:15 33:3 41:20 63:10 64:7,8 67:6 69:12 72:10,15 72:20 73:14 75:4 reason 88:5,9 reasonable 38:21 43:11 44:11 45:13 47:1 48:15	50:25 53:5 67:2 73:1 77:7,13 reasonableness 41:3,4 reasonably 70:5 74:5 reasons 63:23 67:10 recall 10:6,15 40:20,24 41:6,8 42:11 58:4 58:11 64:22 69:5,8 75:21 receipt 88:17 receipts 83:17 receive 30:16 37:23,24 77:7 received 13:8 23:12,23 28:25 44:20 53:17 55:18 58:12,13 66:7 71:6 receiving 71:7 recollection 20:4 recommended 74:14 record 7:7,11 8:19 22:5,9 51:9 55:5,9 86:11 87:12 recorded 87:9 recourse 71:18 recover 35:7,23 53:24 67:17 69:25 recovery 10:10 50:1 51:23 80:18 red 57:11 reference
---	---	---	--

63:10 70:24 74:10 referenced 71:11 84:10 references 50:21 referring 13:18 16:2 47:15,20 47:21 59:18 60:20 64:5 reflect 66:17,20,20 Refuse 32:3,12 regard 43:14 64:23 78:20,23 regarding 19:13 regulates 27:18 reimbursed 41:7 rejection 64:17,17 77:13,15 relate 70:25 72:20,23 77:4 77:6 related 13:4 26:16 37:25 39:20 62:1 72:2 73:23 relates 35:16 62:13 relating 14:3,22 15:12 16:24 17:11 27:10 38:19 39:17 76:11 relations 32:19 relationship 17:5 release 52:15,16 74:25 relevant 15:20 relied 13:6 46:6 79:23	relief 11:23 29:25 30:1,10 rely 39:13 46:21,23 84:9 remember 17:8,24 40:14,16 43:4 75:19 remembered 72:7 remind 70:3 reminding 63:17 remote 1:13 6:23 render 39:13 rendering 79:22 report 4:5 13:7 14:5 20:10 45:1,3,11 46:7,9,13 46:14 54:19,21,24 55:14,25 56:7,13,22 57:7,15,19,22 58:10 58:11,17 59:14 77:10,20 84:1,3,5,9 reporter 1:16 6:21 7:22 8:10 9:5 reports 56:16 represent 8:1 48:23 represented 12:7 32:10 34:8,10 49:12 50:24 representing 35:12 48:3 49:15 51:11 59:6 67:7 request 5:9 7:19 20:9 requested 14:15 67:23 require 29:23	required 80:21 requirement 74:7 requires 48:11 52:14 research 72:16,22 reserved 6:6,8 7:9 Residential 10:10 resolve 36:9 respect 19:7 respective 6:4,12 respond 50:6,8 responded 15:25 responding 15:4 17:12 response 12:21 13:2 14:25 17:3 76:10 77:1 responses 12:22 39:16 rest 64:8 72:11 restaurant 11:9,10,16 restricted 45:16 restrictions 45:10 result 33:17 36:7 resulted 11:9 81:25 results 33:21 retained 4:7 12:11 39:8 40:10 41:24 44:14,15 54:1	77:17 retaining 44:16 return 11:16 88:15 revenue 41:14 review 12:25 13:1,9,11 14:17 15:10 16:18 17:1,3 19:1 20:10 20:19 24:23,24 25:4 43:19 45:2,3,14 46:9 55:3 59:11,21 61:13,22,23 62:1,21 66:16 67:20 74:19 75:15 reviewed 12:24 13:14,23 14:19 15:8 19:2,3,8,10 45:17,20 46:6,8,12 46:18 57:9,25 68:4 reviewing 14:24 47:6 61:6 revisions 56:21 58:4,7,9 revisit 64:19 Rich 41:25 42:4 74:14 RICHARD 2:18 RICH@LAWYER... 2:20 Rick 8:5 Rico 11:6 28:16 right 13:19 18:24 23:5 35:24 36:16 58:15 63:12 75:16 85:23 85:25 role 46:24 83:10 85:2,5 Rory
--	---	---	---

47:16,18,21 75:6 76:11 77:1 83:15 Ross 77:22,24,25 78:4 86:2 ROSSKOPF 2:13 roughly 44:9 Rule 56:1 rules 9:2 27:10 run 85:4 86:6 running 61:1,2	science 25:25 26:2 screen 21:7,8,13,14,19,20 60:12 seal 87:17 sealing 6:5 7:8 season 86:5 second 9:23 10:24 22:3 section 6:19 31:7,7,8,18 32:18 38:3,3 57:23 sections 31:6 secure 69:20 secured 69:23 see 15:24 16:13 21:6,10 21:21,24,25 24:25 57:14 59:3,4 60:12 60:14 64:16 66:4 67:8 68:3,15 73:9 75:14 78:10 80:25 86:2,3,7 seeing 43:4 seeking 10:2 11:23 17:4,6,13 seen 23:14,15,19,20 46:5 56:4 64:15 86:4 selected 45:19 self-insured 35:25 seminars 26:18 send 41:18 48:16 67:13 68:20 69:19 74:24	75:6 sending 51:12,14 62:15 80:17 81:2 sense 85:10 sent 17:3,23,25 34:20 53:11 57:4,8,22 66:2 67:21 70:13 71:4 73:15 76:11 84:19 separate 6:23 51:14 separately 51:14 September 13:24 15:2,3,3 16:5 29:11,13 67:22 68:25 83:17 serve 40:10 47:4 52:21 81:14 served 9:18 10:25 22:15,23 23:2,13 26:6 29:14 39:23 40:8 43:24 44:2 54:20 77:25 78:7 80:10,11 81:5 85:3 services 1:21 7:21,23 83:8 set 42:8 60:22 62:19 63:18,20,25 64:13 64:13 65:20 67:11 67:12 71:15,22 72:6 settle 52:8 64:1 65:10 73:3 73:4,16,20 74:1,3,6 settled 11:14 63:15 65:15,17 65:22 71:20,22 73:9 73:10 settlement 68:2,7,10,12 69:3,7	71:7 72:4 74:9,12 74:15 settling 71:21 Shannon 15:16,23 75:18,19,20 75:24 76:20 sharing 21:8,14,21 sheet 16:6 88:6,8,10,12,15 91:9 shoes 47:13 shop 33:23 shopping 33:16 shorthand 1:16 87:9 show 20:22 21:9 23:19 46:3 57:11 68:11 showed 68:5,6,9,15 69:9 side 29:19 32:1,4 38:1,5 sign 88:9,13 signature 58:17 91:13 signed 40:5 54:11 significant 33:25 48:2 71:23 80:12 signing 6:5 7:8 88:11 similar 38:22 43:12,24 51:1 54:10 73:2,23 80:16 simply 51:8 single 13:9 situation
<hr/>			
S			
S 6:1,1 SADD 2:18 Sadly 70:17 SANDY 2:19 saved 20:13 saw 17:10,15 66:19 saying 48:25 49:2 53:7 72:10 76:10 says 15:2 16:9 21:7 60:19 62:7,8,9,25 64:6,7 66:21 70:20,22 73:6 73:6 74:8,17 75:13 76:5 scheduling 14:6 school 25:8,11 28:15 schools 26:7,11			

38:22,25 39:2 45:14 47:2,25 48:8 63:19 63:25 66:25 71:9 situations 39:7 48:14 59:4 69:22 70:11 74:3 skimmed 14:19 16:22 SLAPPERY 2:18 slip 34:20 small 30:5 31:4,5,17,18 36:25 son 49:12,13 51:15 soon 31:15 sooner 53:12 sorry 46:10 sort 27:13 36:6,16 43:5 48:17 70:25 73:25 75:4 81:23 82:7,11 82:23,23 Soto 71:2 sought 17:9,9 41:4 sounds 10:20 56:12 source 41:14 56:24 space 88:14 Spanish 82:4,4 speak 26:7,15,16,24 27:6 27:11,13,15,19 79:9 speaking 26:17 27:2,21 82:4,5 special	25:14 specific 20:4,9 46:4 59:22 specifically 13:12 14:21 44:13 58:4 71:25 speculate 46:4 spend 15:17 spent 13:14 14:24 15:5,14 42:22 split 76:17 spoken 27:3 66:14 79:2,5,6,7 79:12,14,15 spring 2:19 42:13 St 13:13 16:5 19:4 67:23 68:8,24 76:6 77:4 83:17 staff 28:1,2 stand 9:25 10:3 standard 49:9 64:10 75:9 standing 47:12 87:4 start 48:12 started 21:8 61:6,12 85:24 starting 61:12 state 7:25 8:19 26:19 28:6 29:14,16,18 38:2 65:8 77:25 80:13 stated 46:7,13 64:23 83:24 statement 57:23	States 1:1 7:14 statues 59:10 statute 52:14 59:17,18 statutes 52:22,23 80:24 steps 47:7 STIPULATED 6:2,10,17 Stipulations 5:15 stop 21:13 67:20 stopped 21:20 straightforward 62:22,23 75:9 strange 21:15 strategic 63:22 STREET 2:14 strong 80:22 structure 56:22 57:1 students 26:7 studies 25:15,15 style 40:16,22 subject 39:9 41:1 75:22 77:17 78:18 84:15 84:21 88:11 subpoena 4:4 20:19 22:13 23:12,15,23,25 24:2 subscribe 37:21 Subscribed	91:15 substance 91:8 substantial 56:21 substantially 56:18,19 successful 40:13 sue 11:9 sued 34:9 suffering 63:24 65:7 sufficient 48:8 suggest 76:17 suit 36:19 37:6 SUITE 2:4,9 sum 12:21 Summerville 40:19 summit 67:24 superior 30:1,8 supervision 87:10 Supplementation 14:10 SUPPORT 5:1 sure 9:9 13:22 22:4 28:22 41:15,16 43:22 44:15 45:24 50:19 54:2 55:4 56:18 64:7 72:7 74:21 75:3 surprising 45:24
--	---	--	---

surrounding 27:5	56:23	45:12 46:22 56:20	82:22
survey 52:25	ten 44:22,25	57:7 58:13,14,14,15	titled 55:25
surviving 49:13	tend 76:16	62:7,13,21 63:4,7	today 7:6,17 9:4,16 12:8,13
suspect 12:9 76:22	tender 17:18,22 74:7 76:10	63:17 66:24 68:11	12:16 13:16 16:19
swear 8:10	76:25	69:10 70:18 71:19	20:20 23:8,11 24:14
switch 38:4	tendered 17:16 70:21 73:21	72:18,21 73:9,11,20	45:9 46:2 60:3,22
sworn 6:13 8:12 28:12 87:7	tendering 71:5	73:25 74:12 75:19	70:8 77:18 83:24
91:15	terms 36:14 44:4 52:17	76:2,18 77:9 79:2	84:10
T	62:17,19,23	84:17	told 23:10 42:24 55:16
T	testified 8:13	third-party 33:17	84:10
6:1,1 87:1,1 89:2	testify 22:13 23:12 41:21	thirty 88:16	top 18:16 37:19 40:14,23
90:2	testifying 39:9	thought 57:10 58:1,3 64:10	60:19 69:4,5 70:18
take 9:14,15 22:3 31:23	testimony 10:4,17 68:6 87:5,8	72:2	topics 26:8,15,16 27:1
32:5 35:22 55:2	87:12	three 11:14 14:20 15:6	total 18:23 56:10
67:11	testing 34:21 52:25	24:18,18 31:10	town 40:20
taken 1:13 7:2,19 8:21	text 82:25 83:2	33:12 36:16 38:8	Tracey 1:15 7:22 87:23
28:25 47:8 50:21	Thank 10:15 55:4 86:10	55:17 61:3,9 64:4	traffic 85:9,11,13,15
87:5	thereof 87:15	76:18,19,21	training 39:4 79:24 80:9
takes 63:13	thing 41:11 63:14	threshold 30:3	transcribed 87:10
talking 66:24 70:25	things 13:4 14:11 17:9	time 6:8 7:7,17 9:15 11:7	transcript 7:9 86:15 88:17
teaching 26:4,5,13	24:25 25:1 41:13	13:14 14:24 15:5,14	transcription 87:11 91:5
tecum 20:20	58:2,9 72:8 74:23	15:17 24:24 25:4	transcripts 19:8,11
Ted 82:6	think 12:22 13:13 14:12	33:13 34:22 37:2	trial 6:9 9:19,24 10:21
telephone 61:24	15:19 16:15 18:6,7	40:24 42:18,22,22	11:1 32:7,8 33:2,4
tell 13:17 25:6 34:16	24:1,2 29:2 31:14	43:15 44:12 45:9	37:24 40:14,22
36:2 43:23 47:24	34:17,18 35:8 36:7	52:4,6 60:1,21	41:22 43:7
49:4 51:8 57:6 64:7	37:19 38:2,17,24	61:12,21 63:13,14	trials 33:5
81:11 87:7	40:2,18 41:2,18	63:20 65:13,15,24	tried 10:22 51:3 82:20
template	42:13,20 43:15 44:2	66:1 67:12 68:25	trip
		70:4 73:4 78:1	
		82:19 85:20,22 86:1	
		87:6	
		timeframe 17:17 32:21 42:6,14	
		52:13	
		times 52:5 69:19 79:19	
		time-to-time 28:2 31:24	
		time	

62:20 75:10,10 trucking 33:19,20 true 87:12 truth 87:7,7,8 try 33:4,6 41:7 45:15 48:16 49:23 62:20 82:18 trying 9:22 60:18 75:5 76:23 Tuesday 60:19,23,23 turned 50:4 twenty-two 11:5 37:16 two 13:4,13,15,20 14:20 15:1 16:4,12 18:22 18:23 19:2,3 26:20 26:23 31:6 36:15 43:16 49:14 51:23 61:3 70:18 74:14 78:2,8 type 29:17 48:7 80:14,25 types 48:13 62:16 67:13 81:21 82:7 typically 35:22 76:16 81:22 82:2	14:25 15:9,9,15,19 15:19,22,24 16:5,11 17:3,6,13,17,25 18:3 19:3 21:5 24:8 24:23 26:5,13,14,17 26:22 27:1,3,13 28:2,11 29:22,23,23 30:12 31:17 32:18 32:19 33:2 34:7,9 34:17,24 35:3,16 36:3,4 38:7 39:5,16 40:2,13,21,24 41:8 42:9 43:1,1,20 44:7 44:21,25 46:13 47:6 48:4,15,20,21,23 49:6,6,12,15 50:1 50:20,21 51:11,11 51:25 52:12,13,19 53:17 54:13 56:7,23 56:23,23 57:7,18,19 58:22 59:5 60:19,21 60:22 63:15 64:9,11 64:11,13,15 65:14 65:16 66:21,25 67:3 67:12,14,21,23,24 68:22,24 69:9,15,17 69:23 71:12,15,19 71:20 73:3,15,17,19 74:22,24 75:11,13 75:18,23 77:4,25 79:24 80:12,19,24 81:14,16,20 82:3,15 83:15,18,25 84:12 84:18 85:2,3,23 86:2 ultimately 17:15,24 63:7 65:5 um 9:1,6,8,9 10:1,9,19 11:5,6,9 12:18 13:12,14,15,20,22 15:19 16:3,14,23 17:1,8,18,21 18:13 18:15,21 19:3 20:2 21:3,4 22:12,15 23:24 25:15,18 26:8	26:10 27:3,5 29:20 30:6 31:5,15 33:10 33:19 34:20,21 35:21 36:1,8,10,15 36:18,24 37:16,24 38:1,17,18,20 39:4 39:15,19 41:4,10,22 42:14 43:5,15 44:10 45:8 48:2,25 50:7 51:7,21 52:16 54:16 56:19 57:5,6 60:3 61:15 62:7 63:1,5,7 63:21,22,23 64:4,12 64:16 65:12 66:3,8 66:22 68:13 69:9,16 70:4,13,15 72:16 73:13 75:14 76:4 81:24 82:18,24 84:17 86:3 uncommon 39:4 64:18 undergraduate 25:20 underlined 43:7 73:24 underlying 35:13 39:17 understand 50:19 understanding 80:22 Unfortunately 71:17 United 1:1 7:14 University 25:21 unpleasant 11:8 unrealistic 62:19 unrelated 73:13 unusual 68:11,14 use	58:20 usually 33:16 37:25 82:25 utilize 79:21 <hr/> V <hr/> vague 38:18 valid 52:8 Vanderbilt 25:8,11,21 various 26:7 vast 32:1 vehicle 48:9,10,10 49:19,19 75:24 76:2,22 venue 23:6 verbiage 49:5 verdict 40:22 41:5 43:8 verdicts 13:25 35:9 verified 46:19 versus 7:14 10:9 37:5 57:3 57:12 72:5 82:15 VHARRIS@HNS... 2:6 video 6:21,24 7:11 videoconferencing 1:14 7:3 videographer 2:25 6:22 7:10,20 8:9 9:7 21:20 22:5,9 55:5,9 86:11 videotape 22:16 VIDEOTAPED
--	---	--	--

1:12 view 75:3 virtually 7:19 volume 33:23 voluntarily 23:22 Vs 1:6	86:13 87:13,17 88:1 WITNESSES 3:1 won 69:16 71:13 work 19:6 31:22,22,23 32:2,4 34:4,13 37:11,22 52:25 80:14 85:17,21 worked 31:4,13 42:16 working 30:25 32:18 worries 55:24 worry 67:2 wreck 33:19 39:22 write 66:22 77:10,12 writing 26:8 62:25 63:11,11 66:8 74:22 75:14 written 55:25 66:4 wrong 62:8 wrongful 29:21 30:4 33:9,22 63:15 64:1 65:11,14 65:17,22 71:20,22 72:6 73:3,10,17 74:2,4 wrote 63:15 75:20 www.MagnaLS.com 1:22 W2 30:12	70:23 73:8 74:11 80:3 82:16 year 10:16 25:12,22 26:20 28:11,12 42:15 years 9:22 11:5 31:9 33:12 37:17 38:6,8 52:21 78:2,8 80:10,11 young 84:18	4:4 7:11 16:9,10 20:24,25 21:3 22:13 22:18 57:24 1:23-CV-03491-ELR 1:4 10 40:21 10:03 1:15 7:7,18 10:21 22:5 10:25 22:10 100 37:17 11 72:14 11:07 55:6 11:27 55:10 119 2:14 12:06 86:12 1450 2:4 15 82:17 16.6 76:22 17 2:9 1998 25:23
<hr/> W <hr/>		<hr/> Z <hr/>	
want 20:3 55:3,13,15 64:20 67:14 72:7 81:4 wanted 33:2 73:9 74:11 way 34:20 48:24 75:5,10 week 43:16 weekly 39:3 weeks 61:3,4,9 weird 21:12 well-versed 38:18 39:6 went 32:8 33:4 65:22 WILLIAM 2:8 Willis 53:11 75:25 win 70:6 winning 72:4 witness 3:2 5:3 6:13,22 7:4 8:10 9:18 11:1 12:5 12:11 21:16,25 22:4 39:24 55:15,22		zealous 48:24 Zoom 1:13 7:2	
		<hr/> \$ <hr/>	
		\$1,100 83:6 \$1,100.00 44:10 \$100,000 18:7,9 71:14,17 \$100,000.00 18:6,8 \$25,000 76:25 \$25,000.00 48:11 \$300,000 18:7 \$50,000 18:10 76:18 \$6,000 45:5 \$6,600.00 44:21 \$600 83:8 \$600.00 44:6,11	11:07 55:6 11:27 55:10 119 2:14 12:06 86:12 1450 2:4 15 82:17 16.6 76:22 17 2:9 1998 25:23
		<hr/> 1 <hr/>	<hr/> 2 <hr/>
	yeah 13:14 21:10,18 22:1 60:21 61:20 64:9		2 4:5 9:24 55:11,25 62:6 20/25 4:4 2001 25:13 28:10,11 2002 28:12,13 32:24

2005 32:24	33301 2:4	51:12,16 52:1,17 59:19 81:1	
2008 85:22	352 2:19	9-11-68 40:1	
2009 85:22	<hr/> 4 <hr/>	954 2:5	
201 2:3	4 16:14		
2010 29:15 78:4 86:1	404 2:15		
2020 29:15	467-7900 2:5		
2021 29:11,13	<hr/> 5 <hr/>		
2022 10:18	5 58:18 78:17		
2024 1:14 7:6,17 87:18 91:16	5th 15:2,3		
22 81:20	522-7744 2:15		
25 1:14 7:6,17	55/11 4:5		
26A2B 56:2	<hr/> 6 <hr/>		
<hr/> 3 <hr/>	6 5:17 78:17		
3 4:6 60:8,9 66:21	6th 13:24 15:3,3 16:5 67:22 68:25 83:17		
3:00 60:19	60/9 4:6		
30 50:7 52:13 68:16,25 74:22 88:16	624-6221 1:21		
30th 87:18	<hr/> 8 <hr/>		
300 2:9	8 3:7		
30030 2:14	866 1:21		
30328 2:19	<hr/> 9 <hr/>		
30329 2:10	9th 14:3		
3113 6:19	9-11-06.1 75:7		
	9-11-67.1		